

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION-CINCINNATI**

NORCAL TEA PARTY PATRIOTS, FAITH)
AND FREEDOM COALITION OF OHIO,)
SIMI VALLEY MOORPARK TEA PARTY,)
TAMPA 9-12 PROJECT, SOUTH DAKOTA)
CITIZENS FOR LIBERTY, INC., TEXAS)
PATRIOTS TEA PARTY, AMERICANS)
AGAINST OPPRESSIVE LAWS, INC.,)
SAN ANGELO TEA PARTY, PRESCOTT)
TEA PARTY, AND TEXAS PUBLIC POLICY)
FOUNDATION ON BEHALF OF)
THEMSELVES, THEIR MEMBERS, AND)
THE CLASS THEY SEEK TO REPRESENT,)

Case No. 1:13-cv-00341

Plaintiffs,)

vs.)

THE INTERNAL REVENUE SERVICE,)
THE UNITED STATES DEPARTMENT)
OF THE TREASURY, LOIS LERNER,)
STEVEN MILLER, DOUGLAS SHULMAN,)
WILLIAM WILKINS, SARAH HALL INGRAM,)
JOSEPH GRANT, HOLLY PAZ, CARTER HALL,)
BRENDA MELAHN, CINDY THOMAS, BONNIE)
ESRIG, STEVEN F. BOLLING, MITCHEL)
STEELE, CARLY YOUNG, JOSEPH HERR,)
STEPHEN SEOK, ELIZABETH HOFACRE,)
MS. RICHARDS, GRANT HERRING,)
and CURRENT AND FORMER EMPLOYEES)
OF THE INTERNAL REVENUE SERVICE)
IDENTIFIED AS JOHN DOES 1-100,)

Defendants.)

FIRST AMENDED CLASS ACTION COMPLAINT

COME NOW NorCal Tea Party Patriots, Faith and Freedom Coalition of Ohio, Simi Valley Moorpark Tea Party, Tampa 9-12 Project, South Dakota Citizens for Liberty, Inc., Texas Patriots Tea Party, Americans Against Oppressive Laws, Inc., San Angelo Tea Party, Prescott

Tea Party, and Texas Public Policy Foundation (“Plaintiffs”), on behalf of themselves, their members, and the class they seek to represent, and for their First Amended Complaint against the Internal Revenue Service, the United States Department of the Treasury, the named individual Defendants and current and former employees of the Internal Revenue Service, identified as John Does 1-100, state as follows:

SUMMARY OF THE CLAIM

1. This is a class action against the United States Internal Revenue Service, the United States Department of the Treasury, the named individual Defendants, and certain of their officers and agents (John Does 1-100) who are yet to be identified. Each plaintiff is an organization comprised of individual citizens who have joined together to exercise their rights to freedom of speech and expression. While these groups were formed for a variety of specific purposes, they have at least one important characteristic in common: their apparent dissent from the policies or ideology of the Executive Branch of the United State Government under its current Administration (hereafter, the Plaintiffs, their members, and the class they seek to represent are referred to as “dissenting groups”). Because their primary purposes are charitable or to promote the common good and general welfare of the citizens of their respective communities, the dissenting groups sought recognition of exemption from taxation by the Internal Revenue Service under Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code. However, the IRS and/or its agents targeted the dissenting groups for intensive and intrusive scrutiny, probing pervasively into their members’ associations, speech, activities, and beliefs.

2. Elements within the Executive Branch of the federal government, including Defendants, brought the vast powers, incomprehensible complexity, and crushing bureaucracy of the IRS to bear on groups of citizens whose only wrongdoing was their presumed dissent from

the policies or ideology of the Administration. In other words, these citizens were targeted based upon their political viewpoints.

3. Defendants employed an array of tactics, including extra scrutiny, intimidation, harassment, invasion of privacy, discriminatory audits, disclosure of private information, and years of delay.

4. Dissenting groups suffered years of delay and expense while awaiting recognition of their tax exemption (which, for many, still has not come). They also were forced to waste valuable time and money answering the IRS's questions. The result was a chilling and muzzling of free speech and association. Hundreds of other citizen groups who met the IRS' criteria—at first, groups with “tea party” sounding words in their names, but later, various groups whose members dissented from government policies and philosophy—suffered the same fate. Accordingly, Plaintiffs bring this suit on their own behalf, on their members' behalf, and for the putative class. They assert three claims: (1) damages for violation of 5 U.S.C. § 552a (the Privacy Act of 1974); (2) damages against the individual and John Doe Defendants under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971) (“*Bivens*”), and injunctive and declaratory relief against the IRS and Treasury Department pursuant to 28 U.S.C. §§ 2201 and 2202, for violation of the First and Fifth Amendments; and (3) damages under 26 U.S.C. § 7431 for violation of 26 U.S.C. 6103 (for inspection and disclosure of return information).

JURISDICTION AND VENUE

5. Jurisdiction is proper in this Court pursuant to 5 U.S.C. § 552a (“the Privacy Act”), 26 U.S.C. § 7431 (damages action for inspection of return information), 28 U.S.C. § 1331 (“original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the

United States”), and 28 U.S.C. § 2201 (Declaratory Judgment Act). As set forth below, Plaintiffs’ damages claims against the individual and John Doe Defendants arise under the First and Fifth Amendments of the United States Constitution and constitute a civil action cognizable in federal courts under *Bivens*.

6. Venue is proper in this district because it is the district in which many of the relevant agency records are situated. 5 U.S.C. § 552(a)(g)(5). Additionally, venue is proper in this district because “a substantial part of the events or omissions giving rise to the claim occurred” at the offices of the Internal Revenue Service in Cincinnati, Ohio and many of the defendants and, upon information and belief, at least some of John Does 1-100 reside in the vicinity of Cincinnati, Ohio. 28 U.S.C. §§ 1391(b)(2) and (e)(1)(A) and (B).

PLAINTIFFS

7. The NorCal Tea Party Patriots is a non-profit organization located in Colfax, California. Its purpose is to support and conduct non-partisan research, education, and informational activities to increase public awareness of legislation and legislators. Its mission is three-fold: (1) fiscal responsibility; (2) constitutionally limited government; and (3) free markets. NorCal has, from time to time, been comprised of a six-member board of directors, including its chairman/secretary, Virginia (“Ginny”) Rapini, who associated together in a corporate, tax-exempt form to maximize the effectiveness of their expression.

8. Faith and Freedom Coalition of Ohio is a non-profit organization located in Columbus, Ohio. It was founded to support core tenants of faith and freedom.

9. Simi Valley Moorpark Tea Party is a non-profit organization located in Simi Valley, California. It was organized to support the U.S. Constitution’s basic principles.

10. The Tampa 9-12 Project is a volunteer non-profit organization, with more than 2,000 members, located in Tampa, Florida. It holds classes on history, politics, economics, and current events. It also hosts candidate forums, conducts research, and promotes social welfare.

11. The South Dakota Citizens for Liberty, Inc., is a non-profit located in Rapid City, South Dakota. It opposes irresponsible tax and spending policies, supports the Constitution, and communicates principles of limited government.

12. Texas Patriots Tea Party is a non-profit organization located in Burleson, Texas. It is devoted to educating the public regarding our history and form of government.

13. Americans Against Oppressive Laws, Inc. is a non-profit organization located in North Port, Florida. It is dedicated to promoting the awareness of oppressive laws and the need to curtail them.

14. San Angelo Tea Party, Inc. is a non-profit located in San Angelo, Texas. It is devoted to such goals as inspiring citizen participation, individual liberty, limited government, and upholding the Constitution.

15. Prescott Tea Party is a non-profit organization located in Prescott, Arizona. It is devoted to educating the public about principles of limited government and the Constitution.

16. Texas Public Policy Foundation is a non-profit organization located in Austin, Texas. Its purpose is to sponsor scholarly research on various issues of public policy and disseminate those research results to the public.

DEFENDANTS

17. The Internal Revenue Service (“IRS”) is the chief tax collection agency of the United States and is a division of the United States Department of the Treasury.

18. The Department of the Treasury is a subdivision of the Executive Branch of the United States Government and supervises and directs the IRS.

19. The IRS Exempt Organizations Rulings and Agreement Office is located in Washington, D.C., and has final authority within the IRS to grant or deny tax-exempt status.

20. The Rulings and Agreement Office exercises supervisory authority over the Determinations Unit located in Cincinnati, Ohio. The Determinations Unit makes the initial decision as to whether an organization will be granted tax-exempt status. The Determinations Unit also receives guidance and expertise by the Technical Unit of the Rulings and Agreement Office in Washington, D.C. Other IRS units around the country have also been involved in the wrongs described below.

21. Lois Lerner was the Director of the Tax-Exempt Organization Unit for the IRS during most of the relevant time period. Ms. Lerner was aware of, supervised, implemented, directed, and concealed the targeting of dissenting groups. After pleading the Fifth Amendment before Congress, Ms. Lerner was placed on paid administrative leave by the IRS. Upon information and belief, Ms. Lerner resides in the Washington, D.C. area.

22. Steven Miller was Acting IRS Commissioner during the period of time in which dissenting groups were targeted. Mr. Miller supervised, directed, was aware of, and attempted to conceal the actions of the IRS and its employees. Upon information and belief Mr. Miller resides in the Washington, D.C. area.

23. Douglas Shulman was IRS Commissioner during the relevant time period. Mr. Shulman was aware of, supervised, directed, and concealed the targeting of dissenting groups. Upon information and belief, Mr. Shulman resides in the Washington, D.C. area.

24. William Wilkins is, and was during the relevant time period, the Chief Counsel of the IRS. Mr. Wilkins was aware of, supervised, directed, implemented, and concealed the targeting of dissenting groups. Upon information and belief, Mr. Wilkins resides in the Washington, D.C., area.

25. Sarah Hall Ingram was Commissioner of the Tax-Exempt Unit of the IRS during part or all of the relevant time period. Ms. Hall Ingram supervised, directed, was aware of, and attempted to conceal the actions of the IRS and its employees. Upon information and belief, Ms. Ingram resides in the Washington, D.C. area.

26. Joseph Grant was Commissioner of the Tax-Exempt Entities Unit of the IRS during part or all of the relevant time period. Mr. Grant supervised, directed, was aware of, and attempted to conceal the actions of the IRS and its employees. Upon information and belief, Mr. Grant resides in the Washington, D.C. area.

27. Holly Paz was Director of the Exempt Organizations Unit of the IRS during the relevant time period. Ms. Paz supervised, directed, was aware of, and attempted to conceal the actions of the IRS and its employees. Further, Ms. Paz reportedly sat in on all interviews by the Inspector General's Office of IRS employees with the express purpose of intimidating employees from telling the truth and suppressing the facts of the IRS targeting. As of July 15, 2013, Ms. Paz was reportedly placed on paid administrative leave. Upon information and belief, Ms. Paz resides in the Washington, D.C. area.

28. Carter Hall was a lawyer at the IRS in Washington, D.C. Mr. Hall directed, supervised, was aware of, and concealed the targeting of dissenting groups. Upon information and belief, Mr. Hall carefully managed one or more of the Cincinnati IRS agents' efforts to target

dissenting groups. Mr. Hall promptly retired from the IRS as soon as his role became public. Upon information and belief, he resides in the Washington, D.C. area.

29. Brenda Melahn is the now retired Program Director of the West Virginia IRS office. Ms. Melahn directed, supervised, concealed, and coordinated with Washington regarding the targeting of dissenting groups. Upon information and belief, Ms. Melahn resides in West Virginia.

30. Cindy Thomas was the Program Manager of the Tax-Exempt Division of the IRS in Cincinnati, Ohio during part of all of the relevant time period. Ms. Thomas directed, supervised, concealed, and coordinated with Washington, D.C. regarding the targeting of dissenting groups. Upon information and belief, Ms. Thomas was involved from the beginning in conceiving and implementing the targeting strategy. Upon information and belief, Ms. Thomas resides in the Cincinnati, Ohio area.

31. Bonnie Esrig was a manager in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. She participated in the implementation, direction, supervision, development of criteria, concealment, and coordination with Washington, D.C. regarding the targeting of dissenting groups. Upon information and belief, Ms. Esrig resides in the Cincinnati, Ohio area.

32. Steven F. Bolling was a manager in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. He participated in the implementation, direction, supervision, development of criteria, concealment, and coordination with Washington, D.C. regarding the targeting of dissenting groups. Upon information and belief, Mr. Bolling resides in the Cincinnati, Ohio area.

33. Mitchel Steele was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. He directly implemented the targeting of dissenting groups through his

interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Mr. Steele resides in the Cincinnati, Ohio area.

34. Carly Young was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. She directly implemented the targeting of dissenting groups through her interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Ms. Young resides in the Cincinnati, Ohio area.

35. Joseph Herr was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. He directly implemented the targeting of dissenting groups through his interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Mr. Herr resides in the Cincinnati, Ohio area.

36. Stephen Seok was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. He directly implemented the targeting of dissenting groups through his interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Mr. Seok resides in the Cincinnati, Ohio area.

37. Elizabeth Hofacre was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. She directly implemented the targeting of dissenting groups through her interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Ms. Hofacre resides in the Cincinnati, Ohio area.

38. A Ms. Richards was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. She directly implemented the targeting of dissenting groups through her interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Ms. Richards resides in the Cincinnati, Ohio area.

39. Grant Herring was a front-line worker in the Tax-Exempt Division of the IRS in Cincinnati, Ohio. He directly implemented the targeting of dissenting groups through his interactions with them, including demands for improper information, invasion of privacy, harassment, intimidation, and delay. Upon information and belief, Mr. Herring resides in the Cincinnati, Ohio area.

40. John Does 1-100 are current and former employees of the Department of the Treasury, the IRS, and specifically, the subdivisions described in ¶¶ 18-19 above.

FACTUAL BACKGROUND

41. On May 14, 2013, the Treasury Inspector General for Tax Administration issued a report entitled, “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review” (“IGR”). A true and accurate copy of the IGR is attached hereto as Exhibit A. The conclusions in the report are true and are incorporated and alleged herein. However, as alleged in greater detail below, the wrongdoing of the IRS extends beyond the conclusions of the IGR both as to time period and scope.

42. Tea party and other groups were singled out for special scrutiny based upon their names or policy positions.

43. On or about March 2010, the Determinations Unit began singling out for special scrutiny requests for tax-exemption for groups identified as “Tea Party,” “Patriots,” “912

Project,” and applications involving political-sounding names that seemed to identify with the Tea Party, such as “We the People” or “Take Back the Country.”

44. These criteria were later expanded to target groups whose issues included government spending, government debt, expanding/limiting government, or taxes.

45. Groups dedicated to educating the public by advocacy/lobbying to “make America a better place to live” were also targeted, as were groups committed to “educating on the Constitution and bill of rights.”

46. Also targeted for special scrutiny were groups who had a statement in the case file criticizing “how the country is being run.”

47. The IRS’s knowledge that this discrimination was illegal is evidenced by their scheme to keep the people’s duly elected representatives in the dark about it. When members of Congress asked IRS officials, including defendants Shulman and Miller, whether the IRS was targeting certain groups for different treatment, the IRS officials provided misleading and deceptive responses to conceal the scheme. Additionally, in responding to written questions from Congress on May 4, 2012, well after she had learned of the targeting, defendant Lerner falsely stated that the intrusive demands for information were simply “development letters the IRS sends to organizations in the ordinary course of the application process.” Further, the White House denied any knowledge that the IRS was targeting dissenting groups until April or May of 2013.

48. The public was unaware that the IRS was targeting dissenting groups for special scrutiny until May of 2013.

49. There is no evidence that liberal or “progressive” political groups or groups supporting the re-election of President Barack Obama or the election of Democrats were targeted for similar delay, intrusive questions, or impairment of their First Amendment rights. Indeed, a

May 15, 2013 Washington Post analysis of the IRS public database of nonprofit organizations showed that groups with the word “progressive” in their names “suffered no similar slowdown pattern,” and their number of approvals “increased each year from 17 in 2009 to 20 in 2012.”

See <http://www.washingtonpost.com/wp-srv/special/politics/irs-targets-conservative-groups/> (visited May 19, 2013).

50. The IGR identifies 296 applications targeted for review by the Cincinnati office alone based on the groups’ name or conservative or libertarian political views. Other reports suggest the number may exceed 500. Only through discovery will the full scope of this viewpoint discrimination be identifiable.

51. Once the IRS decided to begin targeting dissenting groups for special scrutiny it issued the first of several “be on the lookout” or “BOLO” listings. The initial BOLO listing simply identified the Tea Party movement. Further BOLO listings included the additional dissenting criteria described above.

52. Once a dissenting group was targeted for special review, its file was forwarded to a team of specialists within the Determinations Unit in Cincinnati.

53. Once forwarded to the specialist for greater review, the organization was subjected to unreasonable delays and often harassing, illegal, and discriminatory demands for private information.

54. The IRS’ intent to engage in viewpoint discrimination is further evidenced by the fact that from March of 2010 until July of 2011 the IRS simply referred to these cases as the “tea party cases.”

55. Nina Olsen, the IRS National Taxpayer Advocate (“NTA”), and the Taxpayer Advocate Service (“TAS”) issued a report to Congress on the targeting of dissenting groups on

June 30, 2013, entitled “Special Report To Congress: Political Activity and the Rights of Applicants for Tax Exempt Status” (hereafter, “Advocate Report”). A true and correct copy of the Advocate Report is attached hereto as Exhibit B.

56. The Advocate Report recommended “apology payments” to targeted groups to show that the government “recognizes its mistake and the taxpayer’s burden.”

57. Neither the NTA nor TAS were informed by the IRS of the delays, as the law requires. They were therefore unable to intervene in any meaningful way to stop the targeting. In the few cases in which the TAS tried to intervene, it was resisted at every turn by Defendants.

58. The law requires that cases delayed more than 30 days beyond normal processing time be referred to the TAS. Defendants violated the law by not referring any of the class members’ cases even though at least hundreds of cases were so delayed.

59. The Advocate Report lists numerous violations by Defendants of dissenting groups’ rights, including:

- a. the right to be informed, which Defendants violated by failing to post their criteria, standards, form letters, and BOLOs;
- b. the right to timely processing;
- c. the right to be assisted;
- d. the right to be heard;
- e. the “right to privacy’ [which] was violated when the IRS burdened them with unnecessary questions . . .”
- f. the “right to confidentiality’ was violated by the request for donor information that would otherwise be non-public were it provided in the annual

Form 990 filing.” (In other words, “The IRS’s request for donor lists also meant that donors would be disclosed to the public.”); and

- g. the “right to a fair and just tax system,” which “was demonstrably violated by the EO’s failure to design the application process” to elicit information in an impartial manner.

60. The conduct and acts set forth in Paragraph 58 did in fact occur, and did in fact violate the rights identified by the Advocate Report.

61. As the Advocate Report also observes, the information requested from dissenting groups was “excessive.”

62. Additionally, as Advocate Report explains, Defendants’ failure to post their criteria, standards, form letters, and BOLOs violated the law.

63. Subsequent disclosures have revealed the targeting of dissenting groups to be much more widespread than reported by the IGR or discussed in the Advocate Report. The targeting involved more IRS offices, personnel, groups, and a broader time period. Reports to date have merely disclosed the tip of the iceberg, and only discovery will reveal the full scope of this targeting.

Demands for Burdensome Information Disclosure

64. One tactic utilized by the IRS to harass, intimidate, and discriminate against dissenting groups critical of the current Administration was to demand disclosure of information not authorized by the Internal Revenue Code or any other federal law.

65. Plaintiffs, like the vast majority of dissenting groups, are mom and pop operations, run by ordinary citizens, often new to the process of formally organizing to express their views, to educate their fellow citizens, and promote the common good and general welfare.

Like most tea party organizations, Plaintiffs often operate on shoe string budgets and rely on members and volunteers to perform the vast majority of their activities. Plaintiffs do not have large corporate structures or in-house legal teams to respond to massive and technical requests for information.

66. Yet as evinced in great detail in below, these broad and sophisticated inquiries are exactly the kinds of requests the IRS made of the dissenting groups who fit its criteria for special scrutiny.

67. The IRS engaged in a tactic of suffocating Plaintiffs and other similarly situated groups with requests that were so searching and extensive that they would have presented a serious challenge even for sophisticated businesses.

68. The breadth of the requested information has been described by the IGR as inappropriate, unnecessary, and burdensome.

69. An example of the sort of information the IRS sought from dissenting groups is found in the January 27, 2012 demand for information from NorCal Tea Party Patriots. (*See* Exhibit C, attached). After doing nothing with any dissenting group's application for thirteen months (as will be discussed below), the IRS sent a demand for information to NorCal Tea Party Patriots. The information had to be gathered and provided under penalty of perjury by February 17, 2012. The January 27, 2012 letter demanded information that far exceeded the IRS's needs in lawfully considering NorCal's request for an exemption.

70. For example, the IRS demanded the following information:

- a. a list of all events and activities conducted since July 2010, including the time, location, and content schedule of each event; the names and credentials of any instructors; detailed contents of the speeches or forums, names of the speakers

or panels, and their credentials, and the amount paid for each speaker; the names of persons from NorCal Tea Party Patriots and the amount of time they will or had spent spend on the event, as well as the compensation paid to each person, *Id.*, ¶ 1;

- b. information about NorCal Tea Party Patriots's website and internet related activities, such as the amounts incurred for these activities for 2010 and 2011, and the amounts to be incurred in 2012 and 2013, *Id.*, ¶ 2;
- c. copies of any newsletters or emails distributed to members or the public, *Id.*, ¶ 3;
- d. copies of any new publication and/or advertising materials that were not already provided in the application or response submitted in July 2010, *Id.*, ¶ 4;
- e. whether NorCal Tea Party Patriots had conducted or would conduct rallies or exhibitions for or against any public policies, legislation, public officers, political candidates, and the like, *Id.*, ¶ 5;
- f. the time, location, and content of each scheduled rally or exhibition; copies of handouts that NorCal Tea Party Patriots did or would provide to the public, *Id.*;
- g. the names of NorCal's members and the amount of time each person would spend on the event; and the percentage of time and resources the NorCal Tea Party Patriots planned to spend conducting these activities in relation to its total activities for the year, *Id.*;

- h. whether NorCal Tea Party Patriots had or would conduct candidate forums or any other events where political candidates were asked to speak, the names of the candidates, time and location of events, number of people in attendance, copies of all handouts distributed at these events, any recordings of the events, and a transcript of speeches given by the political candidates, *Id.*, ¶¶ 6-7;
- i. materials or other communications distributed by NorCal Tea Party Patriots on behalf of another organization or person, including copies of these materials, an indication of when and where the materials were distributed, and the names of the persons distributing the materials, *Id.*, ¶ 8;
- j. whether NorCal Tea Party Patriots had or intended to conduct voter education activities, such as voter registration drives, voting drives, or distribute voter guides; the names of the members who had or would conduct these efforts and copies of all materials distributed to further these efforts, *Id.*, ¶ 9;
- k. whether NorCal Tea Party Patriots had or planned to make any attempts to influence the outcome of specific legislation, *Id.*, ¶ 11;
- l. information about NorCal Tea Party Patriots's direct or indirect communications with members of legislative bodies. The IRS then demanded copies of these written communications, *Id.*, ¶ 12;
- m. the names of other IRC 501(c)(3), 501(c)(4), or 527 organizations, together with the name, employer identification number, and address of each such organization, a detailed description of the nature of the relationship between NorCal Tea Party Patriots and the other organizations, the nature of their

- contacts, and a list of shared employees, volunteers, and other resources, *Id.*, ¶ 13;
- n. copies of all solicitations made by NorCal Tea Party Patriots and copies of all documents related to fundraising events, *Id.*, ¶ 14;
 - o. information about NorCal Tea Party Patriots's board of directors and the board's activities, including all copies of corporate minutes from August 2010 to present, the titles, duties, work hours, and compensation of the board members, officers, and employees, and the names of any board members or officers who has or intends to run for a public office, *Id.*, ¶ 16;
 - p. extensive information about NorCal Tea Party Patriots' membership, including the number of members, the nature of its membership (individuals or organizations), copies of member application forms, membership fee schedule, the roles and duties of its members, and copies of NorCal's website's features that are designed to be available exclusively to its members only, *Id.*, ¶ 17;
 - q. information on the income NorCal Tea Party Patriots received and raised from its inception to the time the information was requested, and its projected income for 2012 and 2013, *Id.*, ¶ 18;
 - r. the names of donors, contributors, and grantors and whether these persons had or intended to run for office and which office, the amounts and dates of the contributions, and a detailed description of how NorCal Tea Party Patriots used these monies; the amount of membership fees NorCal Tea Party Patriots

received each year; and the amounts of fundraising received each year, *Id.*; and

- s. detailed information about the expenses NorCal Tea Party Patriots had incurred from its inception to the time the information was requested and all anticipated expenses for 2012 and 2013; the compensation, salary, wage, and reimbursement expenses for each year of NorCal Tea Party Patriots's existence. *Id.*, ¶ 19.

71. Like so many other similarly situated dissenting groups, NorCal Tea Party Patriots was given this unreasonable deadline – January of 2012 – to respond to this onerous request. As the IGR points out, dissenting groups were given unreasonable periods of time to respond to these requests even though the IRS had done nothing to process their request for tax-exempt status for 13 months.

72. The Faith and Freedom Coalition of Ohio (“FFCO”) received virtually identical requests for information on February 14, 2012.

73. On June 19, 2012, FFCO received a letter telling it to disregard the February request for information, but then later received a letter containing further demands. (*See* Exhibit D, attached).

74. The letter demanded that FFCO “list each program/activity you have conducted from inception until now.” It demanded, for each program, the time, location, and description; copies of handouts, pamphlets, and other literature distributed to the public; names of speakers or panel members and their credentials; whether or not any speaker spoke in favor of a candidate and if so, whether the organization publically disclaimed or endorsed those statements.

75. Not content with this second demand, on June 28, 2012, the IRS sent yet a third demand letter. (*See* Exhibit E, attached).

76. It repeated the previous demand regarding each program. It then demanded to know how “each of the activities you’ve described – voter registrations, candidate forums, candidate debates, town hall meetings, citizenship and citizen action seminars – will be conducted.”

77. The letter warned that if the IRS did not hear from FFCO “we will assume you no longer want us to consider your application for exemption and we will close your case.”

78. Defendants’ treatment of FFCO directly contradicts the assertion in the IGR Report and in subsequent IRS statements that the demands for irrelevant information ceased after the January-February 2012 form letters.

79. The demands were not simply limited to FFCO, and did not stop in February 2012. For example, on September 19, 2012, Simi Valley Moorpark Tea Party received a demand for irrelevant information. (*See* Exhibit F, attached).

80. The letter demanded detailed descriptions of each meeting that they had had and copies of materials they had handed out. It also demanded information about the steps that the group would take in the 2012 election cycle, “particularly expenditures to influence the election of political candidates.”

81. And these requests for irrelevant information were not limited to Defendants’ Cincinnati office. For example, on August 2, 2010, the Tampa 9-12 Project received a letter from the Baltimore, Maryland Office of the IRS. The letter requested information concerning educational materials presented at all meetings, and research materials produced or disseminated

by the organization “on social, domestic, economic, defense and foreign policy issues.” (See Exhibit G, attached).

82. The letter also demanded the methodology the Tampa 9-12 Project intended to use in conducting its voter registration drives and demanded copies of the voter registration materials.

83. A particularly egregious violation of First Amendment rights has been suffered by the Texas Public Policy Foundation (“TPPF”). In or around the spring of 2012, the IRS illegally released TPPF’s 990 form with the donor information un-redacted. Subsequently, this highly confidential information was widely circulated in the media. Said release was illegal, intentional, malicious, and politically motivated.

84. Upon information and belief, other dissenting groups’ confidential information has been wrongfully disseminated both within and outside the government.

Delay

85. The NorCal Tea Party Patriots first applied for tax-exempt status in March of 2010. Its approval was not granted until over two years later, on August 2, 2012.

86. Faith and Freedom Coalition of Ohio applied March 9, 2011. Its tax-exempt status was not granted until September 17, 2012.

87. The Simi Valley Moorpark Tea Party applied for tax-exempt status on July 25, 2011. Its tax-exempt status was not granted until November 2012.

88. The South Dakota Citizens for Liberty, Inc. applied on September 3, 2010. Its tax-exempt status was not granted until almost two years later – June 20, 2012.

89. The Tampa 9-12 Project applied for tax-exempt status in February 2010. Its application was not granted until January 2011.

90. Numerous dissenting groups, however, applied and have never been granted the status for which that they are qualified.

91. The Texas Tea Party Patriots applied for tax-exempt status in June 2012. It received demands for additional information from the IRS, including the last one as recent as February 12, 2013. (*See Exhibit H, attached*).

92. The IRS still has not acted upon Texas Tea Party Patriots' application.

93. Americans Against Oppressive Laws applied for tax-exempt status September 7, 2011. They are still waiting for the IRS to act. Though the IRS will not act on their application, it apparently is searching for reasons to deny it. The IRS's Covington, Kentucky office sent the organization a letter, dated May 22, 2013, indicating it had performed a trademark search on their name and demanding irrelevant information. (*See Exhibit I, attached*).

94. This unjustifiable delay was part of the IRS's pattern of withholding approval from dissenting groups.

95. As the IGR points out, inappropriate criteria were in place for at least 18 months which resulted in substantial delays in processing applications of dissenting groups.

96. For the majority of dissenting organizations who applied for tax-exempt status, no work was completed for 13 months.

97. Many were left open for more than three years and crossed two campaign cycles, including the presidential cycle in 2012. Campaign cycles are important because they are mass events that focus the American public on the major policy issues of our day. The 2012 presidential election was particularly important to dissenting groups because it alerted potential supporters to the ideology and public policy of the incumbent President and Administration. Additionally, at the state level, many initiative petition and referendum campaigns coincide with

candidate election cycles. Accordingly, for tax-exempt groups to truly fulfill their expressive and social welfare purposes, it is critical to have an exemption during the windows of heightened public awareness and debate that election cycles bring.

98. Instead, the IRS saddled dissenting groups with delays during these crucial windows of opportunity. This delay was especially damaging to groups like Plaintiffs. As the IGR points out, such groups often withdrew their applications or may not have begun conducting the planned social welfare work they had in mind.

99. As the IGR explains, delays prevented organizations like Plaintiffs from receiving their tax-exempt status, including exemption from certain state taxes and reduced postal rates.

100. Delays in processing tax-exempt status impaired the ability of dissenting groups to solicit donations and plan and conduct their business activities.

101. Additionally, such groups suffered considerable uncertainty because if their tax-exempt status had ultimately been denied, they would have been forced to retroactively file tax returns and pay taxes and penalties for up to two years while their applications were pending.

102. There was extreme delay for these dissenting groups compared to those not targeted for extra scrutiny. It took the IRS an average of 238 days to approve the applications of other groups and an average of 574 days to process the dissenting groups selected for higher scrutiny. For politically-favored groups, the process may have been much faster. After watchdog groups complained that a foundation named after Barack H. Obama, the father of the President of the United States, was a sham charity and was operating without having received tax-exempt status, the IRS' Cincinnati Determinations Unit processed its application in just 34 days, granting tax-exempt status retroactively to the date it had begun its fundraising in 2009.

See <http://www.washingtonpost.com/politics/irs-stalled-conservative-groups-but-gave-speedy->

approval-to-obama-foundation/2013/05/16/90c53e8a-be57-11e2-89c9-3be8095fe767_story.html

(viewed May 19, 2013). The Obama foundation's tax-exemption letter was signed by Lois Lerner. *Id.*

103. Potential donors and grantors are more reluctant to contribute to groups like Plaintiffs when their tax-exempt status is uncertain.

104. When the purpose of a group is to inform and educate the public about the main policy issues of the day, delays through two election cycles can essentially destroy the group's ability to fully and equally participate in the national policy debate. Put simply, the IRS used its power to intimidate, coerce, and chill the expressive activity of dissenting groups.

Chilled

105. Defendants' goal, as described throughout this Complaint, was to discourage dissenting groups from participating in the political process. Defendants' delays, combined with their demands for information and efforts to intimidate, were often so frustrating that they chilled dissenting groups and caused them to withdraw their applications for tax-exempt status.

106. The San Angelo Tea Party applied for tax-exempt status on March 16, 2010. On September 29, 2010, it received its first demand for excessive disclosure. (*See* Exhibit J, attached).

107. The letter demanded such things as its Facebook pages, resumes of its board members, the topics covered at meetings for the past year, copies of all literature distributed at the meetings, and all contracts with third parties.

108. In January 2012, the San Angelo Tea Party received the form demand for information discussed above, as well as a follow-up phone call from IRS agent Grant Herring.

Intimidated by the harassment, the San Angelo Tea Party withdrew its application. (*See* Exhibit K, attached).

109. The Prescott Tea Party applied for tax-exempt status in November 2009. On April 14, 2010, it received a demand for additional information from Carter Hull, an attorney from the Washington, D.C. Office of the IRS. Mr. Hull demanded information about all of the group's political activities, including, its rallies, emails, protests, and any other steps about "how you encourage members to voice their opinions." He also insisted on copies of their email blasts, video presentations, and mailings.

110. The Prescott Tea Party was intimidated and chose not to move forward with their application.

COUNT ONE: THE PRIVACY ACT

111. Plaintiffs incorporate the allegations in Paragraphs 1-110 as though fully set forth herein.

112. 5 U.S.C. § 552a, known as the Privacy Act, grants all citizens certain protections regarding private information. The Defendants violated the Privacy Act in several particulars.

113. Section 552a(e)(1) requires that the agency "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by Executive Order of the President".

114. The Defendants violated this provision by requiring that Plaintiffs produce information about their members' free expression and association that was neither relevant nor necessary to any lawful purpose. Much of the information sought from Plaintiffs and similarly situated groups was not relevant to any lawful purpose of the IRS.

115. The IRS's demand for the information described in ¶ 70, above, violates § 552a(e)(1) and § 552a(e)(3).

116. The provisions of § 552a(e)(3)(A) were violated because the IRS's request for information did not specify the authority which authorized the solicitation of the information and did not specify whether disclosure of the information was mandatory or voluntary. In this case it could only be voluntary since it was not authorized by law, but the IRS did not so notify the recipients.

117. The provisions of § 552a(e)(3)(B) were violated because the IRS did not notify the recipients of the principal purpose for which the information was to be used – in this case, intimidation and delay based on a group's viewpoint.

118. The provisions of § 552a(e)(3)(C) were violated because recipients were not made aware of the routine uses that were to be made of the information. They were not made aware of it because no lawful routine use was contemplated.

119. The provisions of § 552a(e)(3)(D) were violated because no notice was provided to recipients of the effects of not providing the information. The IRS could not tell recipients that it was incapable of imposing any penalty upon them for not responding since the requests themselves were illegal.

120. The provisions of § 552a(e)(4) were violated in that the IRS did not publish in the Federal Register any of the required information regarding this system of records which it was illegally soliciting and maintaining.

121. The provisions of § 552a(e)(5) were violated in that the IRS made no effort to maintain these records with "such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination." The very

purpose for which these records were collected was to ensure unfairness and delay to dissenting groups.

122. The provisions of § 552a(e)(7) were violated in that the law requires that the IRS “maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained...” The information demanded regarding the First Amendment activities of Plaintiffs, their associated members, and similar groups, as outlined in ¶ 70, above, illustrate a clear and intentional violation of this section.

123. The provisions of § 552a(e)(10) were violated in that Defendants did not establish safe guards to ensure the security and confidentiality of the records and prevent embarrassment, inconvenience, or unfairness to the targeted groups. On information and belief, Defendants have improperly disclosed information obtained from dissenting groups to media sources and groups with a political agenda consistent with Defendants’ agenda.

124. The Privacy Act in § 552a(g)(1) provides civil remedies for individuals who have been injured by activities such as the IRS has undertaken. Plaintiffs assert causes of action under subsection (d) because the IRS has failed to comply with several provisions of the Privacy Act in such a way as to have an adverse effect on Plaintiffs and their members.

125. Plaintiffs’ standing is two-pronged. First, Plaintiffs sue on their own behalf as expressive associations of individuals that have assumed the corporate form and have sought exemptions to protect the organizations from paying taxes on the resources the individuals contribute to the groups for their expressive purposes.

126. Second, Plaintiffs assert associational standing on behalf of all their members. Plaintiffs have associational standing on the following basis.

a. First, Plaintiffs' members have standing in their own right. They have been injured because the IRS unnecessarily requested, retained, and shared information about their individual expressive activities and beliefs. For example, the IRS asked for the names of speakers at events (not excluding members), their credentials, and the amount of time members spent at events (or would spend at upcoming events). *See* ¶ 70.a, *supra*. The IRS asked for “the names of... members and the amount of time each person would spend on [events].” ¶ 70.g, *supra*. It asked for “any recordings of events,” (¶ 70.h, *supra*), which would indiscriminately disclose members' political speech. It asked for the “names” of persons—which could include members—who would distribute materials from other organizations (¶ 70.i); the “names of members” who conducted voter education or registration drives (¶ 70.j); a list of “employees” or “volunteers” shared with other organizations (¶ 70.m); information about the board of directors and its activities, and the names of any members who sought to run for public office (¶ 70.o); copies of membership application forms, descriptions of the roles and duties of members, and copies of website areas available only to members (¶ 70.p); the names of donors, contributors, and grantors (¶70.r); and detailed information regarding the topics discussed at meetings and written communications handed out at meetings (*see generally* ¶¶ 70-83). Accordingly, the IRS's demands were targeted to reveal specific facts about the political speech, beliefs, and activities of the individuals who banded together to form each Plaintiff-entity, and who therefore made up each Plaintiff's membership.

Individuals require breathing space to develop, test, share, and act upon political beliefs by disclosing them to the audience, in the forum, and in the circumstances of their choosing—or of not disclosing them at all. The IRS’s disclosure demands violated this core principle by asking Plaintiff’s members to report their own political beliefs and activities, and the political beliefs and activities of their associates. The IRS’s demands therefore proximately caused individuals to suffer damages as set forth in ¶ 127, below.

- b. Second, the individual privacy interests Plaintiffs seek to protect are not only germane to their organizations’ purposes, they are and fundamental to Plaintiffs’ very existence. Each Plaintiff was formed to advance social welfare and the education of society. Plaintiffs perform this function through coordinating their individual members’ expression. But prior to expression, the individuals comprising each Plaintiff must have privacy. Unless Plaintiffs are first able to provide their individual members the privacy and breathing space necessary to conceive, form, and test ideas, Plaintiffs cannot coordinate their individual members’ expression of those jointly conceived, formed, and tested ideas. Therefore, by impairing individual members’ interest in the privacy of their association, the IRS impaired Plaintiffs themselves.
- c. Third, neither the claim Plaintiffs assert nor the damages they request require the participation of Plaintiffs’ individual members in the lawsuit. The IRS targeted the privacy interests and expression of individual members by making blanket disclosure demands to the individuals’ associations, the Plaintiffs. Then, at the request of the IRS, Plaintiffs provided information on

their individual members. The costs of Plaintiffs' member-specific responses were equally borne by all members whose information was disclosed. Additionally, the Privacy Act provides that for low-dollar claims, a uniform minimum of \$1,000 per member is to be assessed as damages. For all of these reasons, the participation of individual members of the Plaintiffs is unnecessary in the litigation, and the government should be able to litigate the case by dealing with the Plaintiffs, the parties it tried to use to harvest the individuals' private information.

127. Wherefore, pursuant to § 552a(g)(4) Plaintiffs state that they and their members have been damaged as a direct and proximate cause of Defendants' actions by:

- The collection of irrelevant and unnecessary information on Plaintiffs, their officers, members, donors, speakers, and protected First Amendment activities.
- The invasion of the privacy of Plaintiffs and the above-referenced individuals.
- The harassment, burden, and expense of complying with demands for information that were not lawful.
- The loss of donations, membership fees, and grants due to the Defendants' invasion of the privacy of Plaintiffs and all people associated with them.
- The cost of bringing this action together with reasonable attorney's fees.

COUNT TWO: VIOLATIONS OF THE U.S. CONSTITUTION

128. Plaintiffs incorporate the allegations in Paragraphs 1-127 as though fully set forth herein.

129. The United States Supreme Court ruled in *Bivens* (*see* ¶ 4, *supra*) that federal officers are subject to personal liability for any violation of constitutional rights of which a

reasonable officer would be aware. *Bivens* is available where there is a constitutional violation and the victim has no other remedy. Other than the damages for the privacy intrusion pled above, Plaintiffs and similarly situated groups and individuals have no statutory remedy for the systematic targeting of dissenting groups based upon the content of their beliefs and expression. This is a constitutional tort and a clear violation of the First and Fifth Amendments.

130. The First Amendment of the U.S. Constitution prohibits the government from discriminating against groups in any fashion based upon their political viewpoints. As detailed above, the IRS engaged in systematic discrimination based upon the speech, expressed viewpoints, and association of Plaintiffs, their members, and similarly situated groups. It subjected them to harassment, unfair delay, denial of governmental benefits, and impaired their ability to participate in the political process.

131. The actions of IRS officers, named individual Defendants, and agents John Doe 1-100 were intended to chill the political expression of dissenting associations like Plaintiffs and their individual members. The IRS agents or officers succeeded in doing so by imposing unreasonable burdens upon the exercise of First Amendment rights and by intimidating through massive government snooping into protected First Amendment activities.

132. The actions of named individual Defendants and John Does 1-100 interfered with the freedom of expressive association of Plaintiffs and its members by demanding details of all groups they associated with and details about their speakers, members, and literature they allowed or distributed.

133. As the IGR report explains, delaying tax-exempt status of Plaintiffs and other similarly situated groups had the effect of impairing their members' expressive associational effectiveness in the 2010 and 2012 election cycles.

134. Dissenting groups like Plaintiffs and their members were denied equal protection of the law. Upon information and belief, applications from favored groups for tax-exempt status were processed far more swiftly than dissenting groups. The benefits of tax-exempt status were thus conferred based on political viewpoint -- not equally, as the law requires. Likewise, the political expression of dissenting groups as a class was greatly burdened by IRS agents, individual Defendants, and officers John Does 1-100, while favored groups (including those using the title “progressive” in their names) were afforded full privileges of the law.

135. Plaintiffs, their members, and similarly situated dissenting groups were likewise denied Due Process of the law by the IRS agents’ actions. The constitutional protections of dissenting groups and the limitations imposed upon the IRS by both the Constitution and statutes were systematically ignored to deprive dissenting groups and their members of their constitutional rights.

136. Plaintiffs assert standing on their own behalf, and associational standing on behalf of their members, on the same basis set forth in ¶¶ 125-126 of this Complaint.

137. Plaintiffs name John Does 1-100 as defendants because the government has not disclosed all the identities of the specific agents or officers in the Determinations Unit or the other subdivisions of the IRS or Department of the Treasury listed in ¶¶ 18-19 of this Complaint. They are referenced here by their actions and by the unconstitutional intent and effects of their actions, and Plaintiffs will plead the identities of specific other agents and officers as it learns them in discovery. However, although some of their identities are unknown, Plaintiffs plead that each agent who authorized, transmitted, accepted, or ratified the requests and responses for information (and the attendant delays) outlined above personally violated the Constitution and

committed a constitutional tort. Additionally, Plaintiffs plead that each individuals' actions were in violation of clearly established law.

138. In sum, because of their political viewpoints, dissenting groups were subjected to harassment, intimidation, delay, discrimination, expense, intrusiveness, and embarrassment all as a part of a scheme by IRS agents, named Defendants, and officers John Does 1-100 to suppress their political activity and punish their political views.

139. Wherefore, Plaintiffs and their members experienced damages, including loss of constitutional rights, interference with their liberty, delay and denial of government benefits, unequal treatment, loss of donations, increased tax burdens including state and local, loss of postal privileges, the expense of responding to the harassing tactics of the IRS, court costs, and attorneys' fees.

140. The actions of the named federal agents and of the individual and Doe Defendants were willful, malicious, reckless, and intended to do harm to Plaintiffs, their members, and similar groups. Accordingly, Plaintiffs are entitled to damages from the individual and Doe Defendants.

141. Additionally, for the reasons discussed above, the IRS and Treasury Department committed the same constitutional violations as the Doe Defendants. This conduct has caused irreparable harm to Plaintiffs, and there is no other adequate remedy at law. This Court may grant declaratory and injunctive relief against the IRS and Treasury Department, pursuant to 28 U.S.C. §§ 2201 and 2202, declaring that the Defendants' discriminatory conduct is unlawful and enjoining them from using tax exemption applicants' political viewpoints to target them and subject them to delay and unnecessary requests for information.

COUNT THREE: RETURN INFORMATION

142. Plaintiffs incorporate the allegations in Paragraphs 1-141 as though fully set forth herein.

143. “Return information shall be confidential,” and with limited exceptions, cannot be disclosed or inspected by employees of the federal government. 26 U.S.C. § 6103.

144. Return information includes, among other things:

- (A) a taxpayer’s identity, the nature, source, or amount of his income, payments, receipts, deductions, exemptions, credits, assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments, whether the taxpayer’s return was, is being, or will be examined or subject to other investigation or processing, or any other data, received by, recorded by, prepared by, furnished to, or collected by the Secretary with respect to a return or with respect to the determination of the existence, or possible existence, of liability (or the amount thereof) of any person under this title for any tax, penalty, interest, fine, forfeiture, or other imposition, or offense,
- (B) any part of any written determination or any background file document relating to such written determination (as such terms are defined in section 6110(b) which is not open to public inspection under section 6110.

26 U.S.C. § 6103(b)(2).

145. All information furnished by Plaintiffs in response to the IRS’s requests was return information pursuant to Section 6103. *See* Paragraphs 64-84, *supra*.

146. As discussed above, the Defendants demanded information from Plaintiffs that was not necessary to determine their tax-exempt status. Defendants made these demands knowing that they were unnecessary for determining Plaintiffs’ status, and knowing that Plaintiffs had been selected for special scrutiny and delay based on their political viewpoint.

147. Defendants inspected Plaintiffs’ information and shared it amongst themselves even though they knew it was unnecessary for making a decision on Plaintiffs’ tax-exempt status, and even though they knew it had been sought based on Plaintiffs’ political viewpoint.

Accordingly, the inspection, review, and disclosure was objectively unnecessary, and subjectively not undertaken, “for tax administration purposes” under 26 U.S.C. § 6013(h).

148. In one case, Defendants released a Plaintiff’s return information—the list of donors on the Form 990 of the Texas Public Policy Foundation—to the public at large. *See* Paragraph 83, *supra*.

149. The United States has waived sovereign immunity and has provided taxpayers a cause of action for damages for knowing or negligent unauthorized inspection of tax return information in violation of Section 6103. 26 U.S.C. § 7431.

150. Each inspection and disclosure was made at least with gross negligence, or was made willfully.

151. The inspections and disclosures resulted from viewpoint discrimination and were undertaken even though the IRS knew the information was not necessary for determining Plaintiffs’ status, and at least for these reasons, among others, the inspections and disclosures did not result from good faith, but erroneous interpretations of Section 6103.

152. Plaintiffs did not request the IRS to make the inspections or disclosures.

153. Accordingly, each inspection or disclosure violates Section 6103 and entitles those Plaintiffs who submitted information in response to the IRS’s demands, as set forth under Paragraphs 64-84, to damages under Section 7431 of the Internal Revenue Code.

COUNT FOUR: CLASS ACTION

154. Plaintiffs incorporate the allegations in Paragraphs 1-153 as though fully set forth herein.

155. Plaintiffs ask this Court to certify a class action of all dissenting groups targeted for additional scrutiny by the IRS from January 20, 2009 through July 15, 2013.

156. The class definition would include all groups who applied for tax-exempt status and were targeted for special scrutiny by to the specialists in the IRS Determinations Unit in Cincinnati, Ohio or any other IRS office or agents. The class would include all members whose applications were delayed and/or additional information sought during this time period, based upon their political viewpoints, including but not limited to the criteria utilized by the Determinations Unit in what they refer to as “the tea party cases.” This criteria would include any of the following:

- groups identified as “Tea Party,” “Patriots,” “912 Project”;
- applications involving political sounding names, such as “We the People” or “Take Back the Country”;
- groups whose issues included government spending, government debt, or taxes;
- groups dedicated to education of the public by advocacy/lobbying to “make America a better place to live”
- groups who had a statement in the case file criticizing “how the country is being run”;
- and
- group who otherwise dissented from Administration policy and were subjected to additional scrutiny for their viewpoint.

157. This case meets all of the prerequisites of Rule 23(a).

158. This class is so numerous that joinder of all members is impracticable. The exact number of all class members can only be determined through discovery. The IGR identifies 296 groups singled out for special treatment based on their political views. Media reports suggest the number to be 500 or more.

159. There are questions of law or fact common to the class. All of the members of the class suffered the same sorts of constitutional violations articulated in Count Two. All were subjected to harassment, discrimination, special scrutiny, and interference with their constitutional rights because of their presumed political views. The same constitutional standards apply to each member of the class and common questions of law apply. Many members of the class were subjected to demands of additional information that violate the Privacy Act as articulated in Count One, and provided return information which was then inspected, as articulated in Count Three. This class was already defined by the IRS based on commonality of its presumed political views and the decision that the IRS would discriminate in the same manner across the entire class. In other words, the IRS through its own criteria defined the class and chose to discriminate on a class-wide basis against everyone who met the class definition.

160. The common questions of law and fact include:

- a. Was there a scheme by the IRS and its employees to target dissenting groups based upon their political viewpoint?
- b. How did the scheme originate?
- c. Who ordered it?
- d. Who was involved?
- e. When did the scheme begin and has it ended?
- f. May the IRS award or deny benefits based upon political viewpoint?
- g. Did the IRS violate the Privacy Act in its treatment of dissenting groups?
- h. Was the IRS' demand for excessive information wrongful and tortious?

- i. Were the constitutional rights of dissenting groups violated by defendants tactics of extra scrutiny, intimidation, harassment, invasion of privacy, discriminatory audits, disclosure of private information, and delays?
- j. How many groups were involved in the targeting? To date, the IRS has given various answers. The IRS' count does not agree with the IGR account, nor with independent accounts.
- k. How was the targeting specifically conducted and concealed?
- l. Are the IRS' standards for evaluating the political activity of organizations appropriate, legal, and constitutional?

161. Plaintiffs' claims are typical of the claims of the class. Plaintiffs were singled out and treated to similar discrimination and harassment by the IRS as the other members of the class as articulated above. The claims in this case are particularly typical because the IRS intentionally chose to treat groups it considered critical of the government, with a dissenting point of view, in the same or similar discriminatory fashion.

162. Plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs' interests are the same as other members of the class in holding the IRS responsible for its illegal activity, ensuring that it never happens again, and being fairly compensated for the results of this illegal activity.

163. The provisions of Rule 23(b)(2) apply because the IRS has acted on grounds that apply generally to the class such that final injunctive relief would be appropriate for the class as a whole. The IGR recognizes that more steps need to be taken to ensure that this type of discrimination does not occur again within the IRS. The class will seek injunctive relief from this Court, including but not limited to:

- A declaration that the IRS may not discriminate in any of its activities based upon the political viewpoint of the applicant or taxpayer;
- That the IRS must not take any action or enforce any rule that interferes with the First Amendment rights and activity of any citizen;
- That the IRS must destroy all records obtained or maintained illegally and in violation of the Privacy Act or any provision of the U.S. Constitution relating to class members or any donors, officers, members, or volunteers of the class members;
- That the IRS establish clear training and guidelines for all employees to prevent this sort of invasion of privacy and discriminatory activity from occurring again in the future.

164. The provisions of Rule 23(b)(3) are met in that questions of law or fact common to class members predominate over individual questions and class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

165. The common questions of law and fact are overwhelming as described above and incorporated here by reference.

166. Individual questions are minimal. For example, some groups may not have received additional requests for information. Therefore, they may have a reduced or no claim under the Privacy Act. To the extent additional information requests created varying burdens on individuals, that can be resolved through individual damage criteria or creation of subclasses.

167. All groups suffered the same violations of constitutional rights. The IRS selected the class members based on the presumed content of their views and expressive activity – and then treated them in an illegal fashion. All class members suffered this same harm and were damaged from the same course of conduct.

168. A single action adjudicating the legal rights of dissenting groups would be more efficient than individual litigation. As noted, class membership will likely run into the hundreds, greatly inconveniencing the judicial system, and requiring needless duplication. A single unified discovery process would greatly expedite this litigation and prevent needless, repetitive document productions and depositions from Defendants.

169. The efficiency of the unified discovery process and the prohibitive expense and complexity that would attend individual cases are illustrated by the following:

- a. The IRS estimates that information relating to the events in the IGR total over 646 gigabytes. That is more than 64 million pages of documents.
- b. Washington officials claim the activity started in Cincinnati. Cincinnati employees say it began in Washington. Perhaps dozens of depositions will need to be taken to sort out the facts. It would be an inefficient use of judicial time and resources to engage in this process multiple times.
- c. There is a maze of bureaucracy, documents, emails, policies, and conflicting stories in this case. A unified process is best to sort it out.

170. Likewise, a single trial court ruling upon the constitutional, Privacy Act, and return information claims would greatly improve judicial efficiency.

171. All of these factors illustrate the benefits of concentrated litigation in a single forum.

172. No other class action has been filed. In the weeks after the instant action was filed, only two other cases have been filed on behalf of certain groups related to these facts. Other than those two, no additional cases had been filed as of August 5, 2013. Both of those cases are pending in Washington, D.C. -- which is not likely to be the most convenient forum.

Those plaintiffs can choose to participate in the class or opt out. Thus, no other litigants' activities should be impaired.

WHEREFORE, Plaintiffs pray that this Court:

- Enter an Order certifying this case as a class action and appointing their lawyers as class counsel;
- Award Plaintiffs actual damages pursuant to 5 U.S.C. § 552a(g)(4) for violation of the Privacy Act, including but not limited to, costs of complying with additional requests for information, loss of donors and membership fees for the delay, uncertainty, and intrusiveness, but in any event no less than \$1,000 for each individual member, plus the cost of litigation, and reasonable attorney's fees.
- Award Plaintiffs damages for violation of their constitutional rights, including damages for loss of benefit of tax exempt status, cost of complying with burdensome requests, loss of donors and membership fees, damages for impairment of constitutionally protected rights, punitive damages, litigation costs, and reasonable attorney's fees.
- Award Plaintiffs declaratory and injunctive relief, pursuant to 28 U.S.C. §§ 2201 and 2202, as set forth above.
- Award Plaintiffs damages pursuant to 26 U.S.C. §7431(c) for each inspection or disclosure of their return information, including \$1,000 for each instance in which actual damages are below this amount, or actual and punitive damages, plus costs and reasonable attorney's fees.

A JURY TRIAL IS DEMANDED ON ALL ISSUES SO TRIABLE.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on August 5, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send a notice of electronic filing to all persons registered for ECF as of this date.



Attorney for Plaintiffs