

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ADAM KISSEL,

Plaintiff,

v.

MICHELLE H. SEAGULL, in her
official capacity as Commissioner of the
Connecticut Department of Consumer
Protection,

Defendant.

Civil Action No. 3:21-cv-00120-JAM

Case Filed: January 28, 2021

Oral Argument Requested

ADAM KISSEL’S MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Adam Kissel seeks a preliminary injunction to protect his right to fundraise on behalf of charitable organizations in Connecticut without undue restraint.

Plaintiff seeks relief under the Free Speech Clause of the First Amendment to the United States Constitution (as incorporated through the Fourteenth Amendment). The Free Speech Clause protects an individual’s right to advocate for and raise money on behalf of charitable organizations. *Riley v. Nat’l Fed’n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797 (1988); *Sec’y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947 (1984). *Vill. of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 100 S. Ct. 826, 63 L. Ed. 2d 73 (1980). But as further explained in the memorandum in support of preliminary injunction and in Mr. Kissel’s accompanying

declaration, Connecticut law imposes several severe restraints on Mr. Kissel's right to speak freely.

These restrictions irreparably harm Mr. Kissel by limiting and compelling his speech under penalty of criminal sanction. An injunction to vindicate Mr. Kissel's First Amendment rights would be in the public interest. Accordingly, Mr. Kissel is entitled to a preliminary injunction to ensure that he is able to speak freely and without unconstitutional limitations.

Plaintiff requests that the Court issue a preliminary injunction preventing the enforcement of the following provisions of Connecticut law which violate his First Amendment rights:

1. Conn. Gen. Stat. Ann. § 21a-190a(3) (application of the paid solicitor requirements to "indirect" solicitation)

2. Conn. Gen. Stat. Ann. § 21a-190f(c) (20-day advance notice requirement and the requirement that Mr. Kissel submit his scripts and promotional material to the Department)

3. Conn. Gen. Stat. Ann. § 21a-190f(e) (requirement that Mr. Kissel disclose his compensation agreement to prospective donors)

Conn. Gen. Stat. Ann. § 21a-190f(k) (requirement that Mr. Kissel keep and maintain the names and addresses of his donors).

This Court has discretion to waive the security requirements of Federal Rule of Civil Procedure 65(c) or require only a nominal bond. *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir. 1997) ("Rule 65(c) gives the district court wide

discretion to set the amount of a bond, and even to dispense with the bond requirement where there has been no proof of likelihood of harm”). Where a preliminary injunction merely requires compliance with the Constitution, no bond is required. *See Pharm. Soc. of State of New York, Inc. v. New York State Dep’t of Soc. Servs.*, 50 F.3d 1168, 1174 (2d Cir. 1995) (noting that it was appropriate to waive a bond when “the nature of the rights being enforced” are “in the public interest”); *Baca v. Moreno*, 936 F. Supp. 719, 738 (C.D. Cal. 1996) (waiving bond because “to require a bond would have a negative impact on plaintiff’s constitutional rights, as well as the constitutional rights of other members of the public affected by the policy”).

DATED: February 8, 2021.

Respectfully submitted,

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Adam Kissell

**motions for pro hac vice granted*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February, 2021, I filed the foregoing electronically through the CM/ECF system, and caused the foregoing to be served on the following non-CM/ECF Registered Participants in the manner indicated:

Via process server through as follows:

Office of the Attorney General William Tong
165 Capitol Avenue
Hartford, CT 06106

Respectfully submitted,

DANIEL M. ORTNER
JAMES M. MANLEY
Pacific Legal Foundation

/s/ Daniel M. Ortner
DANIEL M. ORTNER

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**MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

The right to fundraise on behalf of charitable organizations is constitutionally protected speech. But in Connecticut independent fundraisers are not able to speak freely and instead face significant burdens on their free speech rights.

Adam Kissel is one of the independent fundraisers silenced by Connecticut's unconstitutional restrictions on charitable fundraising. He is an advocate for market-oriented education reform who has worked at the highest levels of education policy and extensively in the philanthropy sector. Accordingly, Mr. Kissel agreed to help the fundraising efforts of the Jack Miller Center ("JMC") a non-profit that that works with professors and educators to teach students about America's founding principles and heritage. Mr. Kissel has long admired JMC and has many contacts in the State of Connecticut who he believes would be supportive of JMC's mission to improve civic education and would be willing to make a donation.

But before Mr. Kissel could begin his efforts to convince others of the value of JMC's work, he discovered that not only would he be required to register with the state but also that he would be subjected to a host of other requirements which significantly burden his First Amendment rights and the rights of the donors that he plans to reach out to. These unconstitutional restrictions would not apply to an employee of JMC or to a volunteer; they apply to Mr. Kissel solely because he wishes to both remain independent and be compensated for his efforts.

If Mr. Kissel wants to be able to reach out to his personal network in Connecticut to request a donation for JMC, then he is required to provide the

Department of Consumer Protection with notice 20 days before he intends to speak. Mr. Kissel is also required to submit to the state a script of what he will say and any promotional material that he intends to use when reaching out to prospective donors. These requirements are significantly burdensome. Mr. Kissel wishes to speak spontaneously and in response to current events and developments. And because his speech will often contain rhetoric that is sharply critical of existing government policies and practices, Mr. Kissel is understandably uncomfortable disclosing that information to government bureaucrats. He also intends to provide his prospective donors with confidential information concerning other JMC donors and plans that have not been made public; he cannot disclose this information to the state without betraying the confidences of donors and JMC.

Even if Mr. Kissel were allowed to speak to donors about JMC without complying with the 20-day waiting period and script submission requirements, Connecticut law continues to burden his speech. Under Connecticut law he is required to disclose to each donor the details of his compensation agreement with JMC and to reiterate this disclosure in writing. This requirement is directly contrary to the Supreme Court's decision in *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797 (1988), and cannot be justified.

Mr. Kissel is also required to track the names and addresses of all donors and to make this information available to the Department on demand. This requirement significantly stymies the effectiveness of Mr. Kissel's outreach and burdens the First Amendment rights of donors. Many of Mr. Kissel's contacts wish to give anonymously

out of fear that they will face retaliation, either by government officials or by members of the public, if their information is exposed. The requirement therefore violates the privacy rights of donors and makes it far less likely that donors will be willing to contribute to JMC.

Troublingly, Connecticut law is so vague and potentially broad that Mr. Kissel cannot know when these requirements apply. The speech restrictions described above only apply to Mr. Kissel if he is engaged in solicitation. But this includes “indirect” solicitation, a term that is never defined by state law. Including “indirect” solicitation under the scope of the law is both unconstitutionally void for vagueness and overly broad because it sweeps in a variety of speech that the state has no interest in regulating. And because the scope of the law is so unclear and a violation carries with it the threat of sanctions and even criminal penalties, Mr. Kissel has not spoken to anyone in Connecticut about JMC even informally.

Mr. Kissel wrote to the Department of Consumer Protections raising his concerns. In response the Department vaguely assured him that some of his concerns—like the need to disclose confidential information to the state or his compensation agreement to each prospective donor—were not “enforcement priorities.” But the Department did not contest any of the underlying requirements that Mr. Kissel is obligated to comply with on penalty of fines or criminal sanctions. Accordingly, he seeks a preliminary injunction from this Court freeing him from these restraints on his speech in support of JMC and other similar non-profits.

If an injunction is not issued, Mr. Kissel will continue to be chilled in his ability to speak freely on behalf of JMC in Connecticut. He will not know what he can say without registration. And if he registers he will still be required to comply with all of the other onerous and burdensome requirements challenged here. This Court must therefore enjoin the enforcement of these requirements in order to protect Mr. Kissel's constitutional right to speak freely.

STATEMENT OF FACTS

Plaintiff Adam Kissel has extensive experience in higher education policy and philanthropy. Kissel Declaration ¶ 2. From 2017 to 2018 Mr. Kissel served as the Deputy Assistant Secretary for Higher Education Programs at the U.S. Department of Education. Kissel Declaration ¶ 3. Prior to his time at the Department of Education, Mr. Kissel worked at a variety of charitable organizations including the Foundation for Individual Rights in Education, the Institute for Humane Studies, the Charles Koch Foundation, and the Philanthropy Roundtable. Kissel Declaration ¶ 4. Mr. Kissel is now a Senior Fellow at the Cardinal Institute for West Virginia Policy, a 501(c)(3) that researches, develops, and communicates free-market economic public policies for West Virginia. Kissel Declaration ¶ 5.

Because of his experience in higher education policy and philanthropy, the Jack Miller Center ("JMC"), a Philadelphia-based 501(c)(3) that works with professors and educators to teach students about America's founding principles and heritage, reached out to Mr. Kissel to request his assistance in charitable fundraising

related to JMC's education projects. Kissel Declaration ¶ 6. JMC is registered to fundraise in Connecticut and many other states. Complaint ¶ 10.

Mr. Kissel is eager to assist JMC, an organization that he greatly admires and supports, and JMC hopes to compensate him for his efforts. Kissel Declaration ¶¶ 7-8. JMC has agreed to pay Mr. Kissel as an independent contractor to engage in charitable fundraising for an average of 40 hours per month. Kissel Declaration ¶ 8.

Under Mr. Kissel's current contract with JMC, Mr. Kissel is responsible for identifying individuals interested in JMC's mission and who could become major donors. Kissel Declaration ¶ 9. Mr. Kissel is also responsible for identifying foundations that have given to similar programs. *Id.* Mr. Kissel will provide introductions to both prospective individual and foundation donors and will also help JMC with the development of its fundraising strategy. *Id.* Some of these prospective donors and foundations are located in Connecticut. *Id.*

Mr. Kissel would also be responsible for fundraising directly from his contacts and other donor-focused communications, were such speech allowed by law in a manner consistent with his First Amendment rights. Kissel Declaration ¶ 10. JMC would also employ Mr. Kissel to engage in direct donor outreach and fundraising if it could do so in a manner consistent with its ability to avoid disclosure of confidential information and to secure the privacy of its donors and prospective donors. Kissel Declaration ¶ 10. This expectation is expressed in the current contract between JMC and Mr. Kissel which reads: "The Parties acknowledge a mutual desire that Kissel engage in direct solicitation and other donor-focused communications toward

supporting the teaching of America's founding principles and history. The Parties recognize that various states restrict or prohibit this speech and that Kissel would engage in such speech but for the restrictions and prohibitions of various states.” Kissel Declaration ¶ 11.

Connecticut is a high priority state for Mr. Kissel to be able to engage in direct outreach to prospective donors. Kissel Declaration ¶ 13. Mr. Kissel is familiar with several donors who live in Connecticut who are interested in civic education and have the capacity to support JMC’s work—if only Mr. Kissel could reach out to them. *Id.*

But Mr. Kissel is not currently engaging in any of these activities in Connecticut because he recognizes that at least some (and perhaps all) of his proposed activities would require registration as a paid solicitor in Connecticut, which would subject him to the unconstitutional conditions complained of in this action. Kissel Declaration ¶ 15. Mr. Kissel has even refrained from discussing MC at all with any of his acquaintances in Connecticut, even informally, for fear of running afoul of the law. Kissel Declaration ¶ 22.

LEGAL BACKGROUND

Connecticut has two classifications for paid fundraisers: First, a fund-raising counsel who “for compensation plans, manages, advises or consults with respect to the solicitation in this state of contributions by a charitable organization, but who does not solicit contributions and who does not directly or indirectly employ, procure or engage any person compensated to solicit contributions.” Conn. Gen. Stat. Ann. § 21a-190a(6). Second, a paid solicitor who “performs for a charitable organization

any service in connection with which contributions are solicited.” Conn. Gen. Stat. Ann. § 21a-190a(7).

The divide between the two categories turns on whether an individual engages in “solicitation.” Solicitation is defined as “any request directly or indirectly for money, credit, property, financial assistance or other thing of any kind or value on the plea or representation that such money, credit, property, financial assistance or other thing of any kind or value is to be used for a charitable purpose or benefit a charitable organization.” Conn. Gen. Stat. Ann. § 21a-190a(3).

As a paid solicitor, Mr. Kissel will be subject to a host of burdensome requirements that would not apply to him if he is just a fund-raising counsel. In Connecticut, a paid fundraiser must:

- a. Register annually with the department and pay a \$500 fee; Conn. Gen. Stat. Ann. § 21a-190f(a),
- b. Post a \$20,000 surety bond; Conn. Gen. Stat. Ann. § 21a-190f(b),
- c. Provide the state with advance notice 20 days before the start of a solicitation campaign. This notice must include:
 - i. A copy of the fundraising contract with the organization which is then made publicly available,
 - ii. A solicitation notice which includes a description of the event and is also made publicly available, and

- d. The submission of “copies of campaign solicitation literature including the text of any solicitation to be made orally.” Conn. Gen. Stat. Ann. § 21a-190f(c),
- e. Disclose a variety of information every time he speaks to a prospective donor including information regarding “the percentage of the gross revenue that the charitable organization shall receive.” A written confirmation of this information must also be sent to each contact that he has spoken to orally. Conn. Gen. Stat. Ann. § 21a-190f(e)–(f),
- f. File a report at the end of any solicitation campaign (or annually for longer campaigns) detailing the results of his campaign. Conn. Gen. Stat. Ann. § 21a-190f(j), and
- g. Maintain records of all contributors including their names and addresses and open up these records to the Department of Consumer Protection on demand. Conn. Gen. Stat. Ann. § 21a-190f(k).

By contrast, because Mr. Kissel does not plan to have custody or control of contributions, if he were merely a fund-raising counsel Mr. Kissel would only be required to file his contract with JMC fifteen days before beginning to work with them. Conn. Gen. Stat. Ann. § 21a-190e(a). None of these requirements would apply to Mr. Kissel if he were an employee of JMC or an unpaid volunteer. Conn. Gen. Stat. Ann. § 21a-190a(7).

Violations of the requirements for paid solicitors are punishable by a fine of up to \$5,000 and up to one year in prison, as well as the suspension or revocation of registration as a solicitor. Conn. Gen. Stat. Ann. § 21a-190l.

Letter Seeking Clarification

On November 17, 2020, Mr. Kissel sent Commissioner Seagull and other officials at the Department of Consumer Protection a letter outlining some of his concerns with these requirements and requesting clarification as to how the requirements would apply to his speech on behalf of JMC. Kissel Declaration ¶ 23.

Mr. Kissel explained that he was uncertain whether the following actions he planned to engage in would qualify as “solicitation” under Connecticut law:

- a. Hosting a presentation for a small group of 5-10 donors where he discusses several organizations in the education sphere that are worthy of donations including the Jack Miller Center and mentions that these are all 501(c)(3) organizations that are happy to accept contributions,
- b. Participating in conversations between a prospective donor and a representative of the Jack Miller Center—either with or without a direct request for a contribution,
- c. Reaching out to prospective donors via email to discuss the Jack Miller Center and to offer to make an introduction to the officers of the organization to discuss a donation, and

- d. Calling a prospective donor to tell him that he should donate to the Jack Miller Center directing him to the organization's website to make a donation. Kissel Declaration ¶ 24.

Mr. Kissel explained that the requirement that he provide the Department with 20 day notice before beginning a fundraising campaign was deeply burdensome because he will engage in fundraising outreach in direct response to current events which bring education issues to the forefront of prospective donors' minds and that the requirement that he wait 20 days before speaking would severely constrain his constitutionally protected right to speak spontaneously about pressing matters of public concern without prior government restraint. Kissel Declaration ¶ 25.

Mr. Kissel also explained that the requirement that he provide copies of campaign solicitation literature was unconstitutional because he will present to prospective donors documents and information that are intended to be private. Kissel Declaration ¶ 26. For instance, in order to persuade a prospective donor of the breadth or seriousness of support, he will discuss other donors who have already given to the organization. *Id.* The identities of donors are often not appropriate for public disclosure. Mr. Kissel also will explain to prospective donors plans that JMC has not yet made public. *Id.*

Mr. Kissel further explained that he did not wish to disclose his compensation agreement to each prospective donor that he speaks to. Kissel Declaration ¶ 27.

Finally, Mr. Kissel noted that the requirement to maintain records with the names and addresses of contributors would be unduly burdensome because donors

often wish to give anonymously or confidentially for a variety of reasons. Kissel Declaration ¶ 28. Such reasons range from simple privacy concerns to religious convictions against publicizing charitable giving.

Mr. Kissel noted that because failure to properly comply could result in a fine of \$5,000 and up to one year in prison that he needed urgent clarification from the Department. Kissel Declaration ¶ 29.

On January 11, 2021, the Department responded to Mr. Kissel's letter. Kissel Declaration ¶ 30. The Department acknowledged that if Mr. Kissel were to "directly or indirectly make a request for contribution" he would be required to register as a paid solicitor. Kissel Declaration ¶ 31.

The Department stated that the first and fourth scenarios that Mr. Kissel put forward in his letter would require registration and that additional (unstated) facts would be required to determine whether the second and third scenarios would qualify as solicitation. Kissel Declaration ¶ 32.

The Department defended its authority to "require professional fundraisers to register and file regular reports on activities," asserting that "the courts have repeatedly recognized the legitimacy of government efforts to inform the public and prevent fraud through such registration and disclosure requirements." Kissel Declaration ¶ 33.

The Department acknowledged that paid solicitors must "file a Solicitation Notice prior to the Commencement of each solicitation campaign." Kissel Declaration ¶ 34. The Department did not dispute that this notice must be filed 20 days before

the start of a campaign or that the solicitor was required to submit campaign literature. *Id.* But the Department asserted (without appeal to any source of authority) that “the Department does not require confidential materials to be submitted with the campaign solicitation literature.” *Id.*

The Department did not dispute that Connecticut law requires a paid solicitor to disclose “at the point of solicitation the percentage of the gross revenue which the charitable organization will receive,” but stated that it has “not historically” enforced this requirement and that it “does not intend to make this an enforcement priority going forward.” Kissel Declaration ¶ 35.

The Department noted that it “enforced the record retention requirement” but asserted that it “has not historically required disclosure of the names and addresses of donors who wish to remain anonymous.” Kissel Declaration ¶ 36. The Department asserted that it did “not anticipate that the department would compel production of anonymous donor records” without “a compelling enforcement reason.” *Id.* But it did not deny that Mr. Kissel would nevertheless be required to take down and retain these names and addresses in case the Department did demand the information from him. *Id.*

Finally, the Department declared that “[i]n deciding whether to take enforcement actions” it “takes many factors into consideration” such as the “purpose of the legal provision it seeks to enforce” and whether the solicitor “has made reasonable and best efforts to comply with Connecticut laws.” Kissel Declaration ¶ 37.

ARGUMENT

I. Preliminary Injunction Standard

In the Second Circuit, a party seeking a preliminary injunction against a law that has been enacted through the legislative process must show (a) irreparable harm and (b) likelihood of success on the merits. *Citigroup Global Markets, Inc. v. VCG Special Opportunities Master Fund Ltd.*, 598 F.3d 30, 35 (2d Cir. 2010) (quoting *Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc.*, 596 F.2d 70, 72 (2d Cir. 1979)). In addition the Court considers the “balance of equities” and whether an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

II. Mr. Kissel Is Likely To Prevail on the Merits of His Claims

The right to raise funds for a charitable cause (whether or not one is paid to do so) is fully protected by the First Amendment. Connecticut’s charitable solicitation laws restrict Mr. Kissel’s right to speak and cannot be justified by the state’s interest in preventing fraud. The charitable solicitation laws burden Mr. Kissel’s protected speech rights in at least five ways: 1) because the definition of solicit or solicitation is void for vagueness or unconstitutionally overbroad, Mr. Kissel cannot know whether his speech would require registration and compliance with the state’s regulatory requirements; 2) the requirement that Mr. Kissel provide 20-days advance notice before speaking on behalf of JMC violates his right to speak spontaneously; 3) the requirement that Mr. Kissel provide the state with his scripts and other promotional material before speaking is an unlawful prior restraint on his First Amendment rights; 4) the requirement that Mr. Kissel disclose his compensation agreement

during each conversation with a prospective donor violates Mr. Kissel's right against compelled speech; and 5) the requirement that Mr. Kissel record the names and addresses of all donors and make those available to the Department on demand violates Mr. Kissel's and his prospective donors' right to donate and accept donations anonymously.

A. The Supreme Court Has Recognized the Right to Fundraise, Including Paid Fundraising

The Supreme Court has on numerous occasions emphasized that fundraising for charitable and other causes is protected by the First Amendment. The “freedom to distribute information to every citizen wherever he desires to receive it is so clearly vital to the preservation of a free society” and so can only be restricted in extremely limited ways and circumstances. *Martin v. City of Struthers*, 319 U.S. 141, 146–47 (1943). Fundraising is a form of expression that is “characteristically intertwined with informative and perhaps persuasive speech seeking support for particular causes or for particular views on economic, political, or social issues,” *Vill. of Schaumburg v. Citizens for a Better Env't*, 444 U.S. 620, 834 (1980). Fundraising is “fully protected expression.” *Riley v. Nat'l Fed'n of the Blind of N. Carolina, Inc.*, 487 U.S. 781, 797 (1988). Accordingly, any law that imposes a “chill on the protected activity” of fundraising must be subject to heightened scrutiny. *Sec'y of State of Md. v. Joseph H. Munson Co.*, 467 U.S. 947, 969 (1984).

B. Five Elements of Connecticut’s Paid Solicitation Law Chill Mr. Kissel’s Ability to Speak

1. 20-day Waiting Period

The ability to engage in spontaneous or extemporaneous speech is a core part of the First Amendment and “freedom from previous restraint ... was a leading purpose in the adoption of the constitutional provision.” *Lovell v. City of Griffin, Ga.*, 303 U.S. 444, 451 (1938). Accordingly the requirement that individuals must provide advanced notice to the government before speaking is a serious encroachment which “restrict[s] spontaneous free expression and assembly rights safeguarded in the First Amendment.” *Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007). Indeed, “prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights,” *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976), and there is “a heavy presumption against [their] constitutional validity.” *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963).

In *Watchtower Bible & Tract Soc’y of New York v. Vill. of Stratton*, 536 U.S. 150, 163 (2002), the Supreme Court invalidated an ordinance of the Village of Stratton which required canvassers to obtain a permit from the mayor’s office and sign a registration form. The Court explained that “[e]ven if the issuance of permits by the mayor’s office is a ministerial task that is performed promptly and at no cost to the applicant, a law requiring a permit to engage in such speech constitutes a dramatic departure from our national heritage and constitutional tradition.” *Id.* The Supreme Court warned that “[t]o require a censorship through a license which makes impossible the *free and unhampered* distribution of pamphlets strikes at the very

heart of the constitutional guarantees.” And the Court cautioned that this permitting scheme was offensive “not only to the values protected by the First Amendment, but to the very notion of a free society—that in the context of everyday public discourse a citizen must first inform the government of her desire to speak to her neighbors and then obtain a permit to do so.” *Id.* at 165-66. Under *Watchtower*, even a relatively toothless obligation to give the government advance notice of speech inflicts a burden on freedom of expression. Indeed, the very fact that “one must inform the government of his desire to speak and must fill out appropriate forms and comply with applicable regulations discourages citizens from speaking freely.” *N.A.A.C.P. v. City of Richmond*, 743 F.2d 1346, 1355 (9th Cir. 1984).

That is precisely the case with Connecticut’s 20-day waiting period. Mr. Kissel cannot engage in “free and unhampered” conversations with prospective donors because he must provide 20-day advance notice of his intention to do so. This has a significant chill on his ability to engage with potential donors about pressing matters of public concern. For instance, late last year the death of Supreme Court Justice Ruth Bader Ginsburg and the ensuing debate revealed that many Americans lack a basic civic understanding of the role of the Supreme Court and the importance of life-time tenure on the Court. Kissel Declaration ¶ 40. This is an example of a prime opportunity Mr. Kissel would have had to reach out to prospective donors to discuss why this event showed the need for a greater commitment to civic education with a donation to JMC. *Id.* But under Connecticut’s law Mr. Kissel was required to notify the Department 20 days before beginning such a solicitation campaign. That, and the

other requirements complained of in this action, prevented Mr. Kissel from seizing that opportunity to speak—and many others since. After 20 days the news cycle will have moved on, and what was once topical will become irrelevant to prospective donors. *See New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (noting that when someone wishes “to engage in political speech, ... timing is of the essence ... and a delay of even a day or two may be intolerable”). The 20-day waiting period therefore takes away from Mr. Kissel the opportunity to discuss current events with prospective donors that illustrate the importance of civic education and in doing so significantly diminishes his ability to speak freely. Kissel Declaration ¶ 40. The law operates as a prior restraint because it categorically bars all time-sensitive speech that a fundraiser wishes to make in a timely manner without abiding by a 20-day waiting period. *See Citizens United v. Schneiderman*, 882 F.3d 374, 388 (2d Cir. 2018) (“undue delay in approval amounts to an effective restriction”).¹

Moreover, the Second Circuit has explained that prior restraints are particularly problematic when they “suppress[] speech ... on the basis of the speech’s

¹ In *Citizens United v. Schneiderman*, 882 F.3d 374, 387 (2d Cir. 2018), the Second Circuit held that New York’s requirement that a charitable organization disclose their donors on a yearly basis was not a prior restraint on speech. But Connecticut’s 20-day waiting period is substantially different from the annual disclosure at issue in the *Citizens United* case. In that case, the only restraint on speech was the possibility that the state could revoke a solicitation license if a charity refused to comply with the annual disclosure requirement after being asked to cure. In contrast, in Connecticut a fundraiser must give the state notice and wait 20 days before beginning speaking which effectively bars any spontaneous speech or time-sensitive speech.

content and in advance of its actual expression.” *Id.* (quoting *United States v. Quattrone*, 402 F.3d 304, 309 (2d Cir. 2005)). That is precisely the case here.

The Supreme Court has repeatedly emphasized that federal, state, and local governments have “no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Mosley*, 408 U.S. at 95. Thus, laws that “target speech based on its communicative content ... are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). This is true even if the policy is advanced with the best of intentions, because “[i]nnocent motives do not eliminate the danger of censorship presented by a facially content-based” law. *Id.* at 167. Even time, place, or manner restrictions must be “justified without reference to the content of the regulated speech.” *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, 293 (1984).

In *Reed*, the Supreme Court invalidated a sign ordinance that provided different standards for different types of expression. Ideological messages were treated more favorably than messages regarding political candidates, which were treated more favorably than signs announcing events like worship services. *Id.* at 168–70. That discriminatory framework, the Court concluded, was unconstitutional. *Id.* In an even more recent case, the Supreme Court found that a law that allowed robocalls for the purpose of collecting a government debt, but not for political purposes, was content-based. *Barr v. Am. Ass’n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2346 (2020). The Court explained that the law must be evaluated

under strict scrutiny because enforcement of the law both turned on the message that was being expressed and “favor[ed] some speakers over others” in a manner that “reflects a content preference.” *Id.* at 2347 (quoting *Reed*, 576 U.S. at 170); *see also City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993) (invalidating an ordinance that prohibited the distribution of commercial flyers and handbills while allowing newspapers and magazines to be displayed).

Similarly, the 20-day waiting period requirement is both content-based and speaker-based. It is content-based because it applies only to speech that is a solicitation. Requests for money are therefore treated more negatively than any other type of speech. An individual can be paid to call individuals to try to persuade them, to invite them to come to an event, to encourage them to volunteer their time, or take any other action that does not involve a financial contribution.

The 20-day waiting period is speaker-based because anyone other than a paid solicitor is not subject to this prior notice requirement. In particular, those who work directly for a charitable organization are notably not required to provide such advance notice of the subject matter and nature of their fundraising campaigns, and neither are volunteers. The burden falls uniquely on those independent speakers who are paid to fundraise. To know whether the 20-day waiting period applies, the Department must therefore consider the content of the speech and the identity of the speaker.

This is especially troubling because the Supreme Court has explained it is smaller, less established, or less popular charities that must frequently rely on

professional fundraisers. *See Riley*, 487 U.S. at 799 (noting that laws disfavoring professional fundraisers “necessarily discriminate[] against small or unpopular charities, which must usually rely on professional fundraisers”). Discrimination against speech made on behalf of organizations that rely on paid solicitors therefore poses a significant risk of stifling unpopular or uncommon ideas. And even when an organization is financially successful or popular, it should not be penalized for the decision to rely on professional fundraisers as a way to increase its outreach efforts.

Because the 20-day waiting period suppresses spontaneous speech and does so in a content- and speaker-based fashion, it is subject to strict scrutiny. And the 20-day waiting period cannot survive that level of scrutiny.

The Department does not have a compelling interest in knowing in advance when Kissel is going to speak (and, as discussed in the next section, what he is going to speak about). “Because notice provisions have the tendency to stifle our most paradigmatic examples of First Amendment activity, courts must take special care when reviewing the government’s justification for its infringement.” *Am.-Arab Anti-Discrimination Comm. v. City of Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005). The Supreme Court has upheld narrow permitting requirements for the use of public forums such as streets or parks because an application for a permit allows the Government to coordinate the use of resources such as the presence of security officers and to ensure that these limited spaces are utilized in an efficient manner. *Cox v. State of New Hampshire*, 312 U.S. 569, 576 (1941). But there is no similar concern here as Kissel’s speech does not demand the utilization of state resources or

raise the concern that solicitation calls will overburden the phones of potential donors. And while the Department may have an interest in preventing fraud, this interest does not justify the need for extensive advanced notice since any interest the Department has in preventing fraud can be combated by an investigation into any unlawful or deceptive conduct that occurs and through “vigorous enforcement of the [State’s] anti-fraud and misrepresentation statutes.” *Telco Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1233 (4th Cir. 1989).

Even if the Department has a compelling interest for requiring advanced notice in theory, that interest cannot justify requiring notice 20-days in advance. Lengthy advance notice periods of longer than a week have almost always been found to be unconstitutional for precisely this reason. *See Sullivan v. City of Augusta*, 511 F.3d 16, 38 (1st Cir. 2007). Indeed, Connecticut’s 20-day waiting period appears to exceed the length of any advance notice requirement that federal appellate courts have ever upheld. *See N.A.A.C.P., W. Region v. City of Richmond*, 743 F.2d 1346, 1357 (9th Cir. 1984) (collecting cases and noting that “[t]he only advance notice requirements to be upheld by courts have been dramatically shorter than 20 days”). And there is even less of a justification for a lengthy notice period here than in a typical case involving an application for a permit. The Department does not review the substance of the proposed solicitation campaign and does not need to take any action to facilitate the planned campaign like a municipality would in response to a request for a permit to engage in a large expressive gathering like a parade or a march. Accordingly, there is simply no justification for requiring such a lengthy period of advanced notice.

In addition, there are several far less restrictive options. The Department could simply rely on the voluminous reports that are filed annually and at the completion of a fundraising campaign. While advanced notice may be slightly more effective than waiting for a report to be filed, “the First Amendment does not permit the State to sacrifice speech for efficiency.” *Riley*, 108 S. Ct. at 2676. And if advanced notice is necessary, the window could be significantly shortened so that it is possible to speak to prospective donors about urgent and time sensitive matters or contain an exemption for time-sensitive solicitations that cannot wait 20 days.

2. Bureaucratic Review of Solicitation Scripts

The requirement that Mr. Kissel provide 20-day advanced notice of his intent to speak would be troubling and unconstitutional in-and-of-itself. But in Connecticut, Mr. Kissel must not only tell the state in advance that he wants to talk, he must tell the state exactly what he wants to say and how he wishes to say it. This is also unconstitutional. In *Schneider v. State of New Jersey, Town of Irvington*, 308 U.S. 147, 164 (1939), the Supreme Court rejected the argument that a municipality could “require all who wish to disseminate ideas to present them first to police authorities for their consideration and approval” in order to prevent against fraud. The Court explained that while “[f]rauds may be denounced as offenses and punished by law” they could not be subject to prior restraint. *Id.*

Requiring Mr. Kissel to submit his words for review by the Department violates his First Amendment rights in several respects. First of all, this policy will have a chilling effect on Mr. Kissel’s ability and willingness to speak candidly and

critically of government policies and practices. Kissel Declaration ¶ 43 For this reason the Fourth Circuit invalidated a substantially similar Virginia law in *Telco Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1235 (4th Cir. 1989). The Court noted that the requirement to submit scripts “might dissuade some organizations from scripts which, although accurate, may risk the displeasure of state officials.” *Id.* at 1233. The Court rejected the suggestion that the lack of aggressive review of the scripts lessened this burden. The Court explained that the mere requirement that a solicitor “reduce to writing the proposed set presentation” is a “powerful inducement toward orthodox presentation of charitable solicitations—a result which the variety in character of charitable organizations belies and which the commitment to diverse expression in the First Amendment forbids.” *Id.*

As the Fourth Circuit warned, requiring speakers to submit speech to government bureaucrats will invariably create a chilling effect for speech critical of the government which “may risk the displeasure of state officials.” Mr. Kissel plans to speak critically of existing government policies and programs as part of his promotion of JMC. For instance, Mr. Kissel will bring his experience in government to bear to help persuade prospective donors that government sponsored education solutions are unlikely to be adequate and that organizations like JMC need additional support.² He will also discuss with prospective donors a Title IX complaint that he

² In Fall 2020, Mr. Kissel published an op-ed in the *Federalist* in which Mr. Kissel spoke of his experience at the U.S. Department of Education and pointed out some of the incompetency and bureaucratic inertia and inefficiency that he found there. This op-ed is an example of how Mr. Kissel uses his experience as part of an argument in favor of a market-oriented solutions to education issues. Adam Kissel, *What I Saw*

recently filed against Central Connecticut State University. Kissel Declaration ¶ 44. But Mr. Kissel is obviously deterred from speaking as candidly or openly as he would like because he knows that he must tell the State of Connecticut what he intends to say.

Second, the requirement that Mr. Kissel submit scripts to the State of Connecticut compounds the burden imposed by the 20-day waiting period, further limiting his ability to speak spontaneously and freely. Mr. Kissel does not intend to stick to a rigid script during conversations with prospective donors. Kissel Declaration ¶ 45. To the contrary, Mr. Kissel changes his remarks in real time in response to the interests of prospective donors. *Id.* But if Mr. Kissel does so and departs from the script that he was required to submit 20-days in advance, then he risks an investigation and sanction by the Department. Kissel is therefore compelled to stick to canned and stale remarks and will not be able to speak in a more candid and less constrained manner. *Id.* As already discussed at length, this restriction on Mr. Kissel's ability to speak spontaneously and freely is a prior restraint that is deeply offensive to the First Amendment.

Third, the requirement that Mr. Kissel submit scripts as well as solicitation material further chills his speech by limiting his ability to provide donors with privileged or sensitive material and information. For instance, in order to persuade a

Inside the DC Swamp Proved Trump Needs Four More Years of Draining, The Federalist (Oct. 30, 2020), <https://thefederalist.com/2020/10/30/what-i-saw-inside-the-dc-swamp-proved-trump-needs-four-more-years-of-draining/>. Mr. Kissel's forthright indictment of government bureaucracy is unlikely to be popular with the government officials in the Department.

prospective donor of the breadth or seriousness of support, some well-known donors who have already given to the organization have allowed Mr. Kissel to share their names privately and also share the reasons why they support JMC. Kissel Declaration ¶ 26. Similarly, Mr. Kissel will share with prospective donors the amount that others have contributed to JMC to validate the importance of the campaign as judged by other donors. *Id.* Indeed, challenging a prospective donor to meet or exceed the amount that another donor has contributed is a common practice in high-value charitable giving. This information is highly confidential. Mr. Kissel also will explain to prospective donors plans that JMC has not yet made public, such as plans to expand further in Connecticut that may be contingent on receiving sufficient financial support from the donors that Mr. Kissel is speaking to. *Id.* This issue is compounded because the scripts and other materials would become part of the public record and could be discovered through a public record request. Conn. Gen. Stat. Ann. § 1-210 (“all records maintained or kept on file by any public agency ... shall be public records”).

In response to Mr. Kissel’s letter, the Department asserted that Mr. Kissel would not be required to submit “confidential materials.” But this reassurance frankly offers little comfort. For one thing, the statute does not distinguish between confidential and non-confidential material. Conn. Gen. Stat. Ann. § 21a-190f(c); Kissel Declaration ¶ 41. So nothing would prevent the Department from applying the text of the law despite its informal assurances to Mr. Kissel. Moreover, the Department has not explained what information is sufficiently “confidential” to be

excluded from its demand for documents. Kissel Declaration ¶ 41. Accordingly, Mr. Kissel is left to guess whether a particular document that he intends to share with a donor can be withheld or must be submitted. This uncertainty therefore makes Kissel more reluctant to share information that he does not feel comfortable submitting to the Department. *Id.*

Just as the 20 day-notice requirement fails strict scrutiny, the requirement that fundraisers submit scripts and promotional material does as well. Even assuming that having access to this material furthers the state's interest in fraud prevention, the burden on speech is grossly disproportionate and the means chosen are unnecessarily burdensome. For instance, the Department could simply require solicitors to retain copies of their scripts or promotional material in case there is a criminal investigation into some kind of fraudulent conduct.

The requirement that solicitors submit "scripts" is a particular poor fit for the kind of speech that Mr. Kissel engages in. This kind of requirement was likely designed with mass solicitation campaigns made through door-to-door canvassing, street contacting, or phone banking of strangers. In contrast, Mr. Kissel plans to speak primarily to individuals he knows personally or professionally through his network. So another far less restrictive alternative would be to limit this requirement to only apply to mass solicitation campaigns (to more than a certain number of people) or to outreach to individuals who are strangers. There is no justification for requiring all solicitors to submit their material in advance to the Department.

3. Sharing Information About the Compensation Agreement

Connecticut also requires professional fundraisers to disclose their financial compensation agreement in each and every conversation with a prospective donor. The Supreme Court in *Riley* invalidated a substantially similar requirement. It explained that the requirement that a solicitor disclose this information was compelled speech, a content-based regulation, and “subject to exacting First Amendment scrutiny.” 487 U.S. at 798. The Court noted that this kind of compelled disclosure would necessarily alter a solicitor’s speech and impede a solicitor’s ability to fundraise. And it held that the “the prophylactic, imprecise, and unduly burdensome rule the State has adopted” could not be justified since less burdensome options were available such as having the state publish financial disclosure forms. *Id.* Connecticut’s law is substantively identical to the North Carolina law, except that it is worse, because it also requires a solicitor to put this information in writing and to send that to every prospective donor after an oral solicitation. Accordingly, it must be invalidated as a violation of Mr. Kissel’s right to not be compelled to speak.

The Department claimed in its letter that enforcement of this section was not an “enforcement priority.” But the Department’s tepid reassurance is inadequate. The Department does not disclaim interest in enforcement of this requirement nor concede that enforcement would violate binding Supreme Court precedent. *See New Mexicans for Bill Richardson v. Gonzales*, 64 F.3d 1495, 1502 (10th Cir. 1995) (finding that a First Amendment challenge was ripe even though there was “no affirmative evidence that prosecution for violating the statute is imminent” because the state had not “affirmatively disavowed any intention of bringing criminal prosecution”).

Mr. Kissel should not be required to violate the law in the hope that the Department's enforcement priorities do not shift. *See Project Veritas Action Fund v. Rollins*, 982 F.3d 813, 826 (1st Cir. 2020) (“a party need not marshal all its resources and march to the line of illegality to challenge a statute on First Amendment grounds”). And so long as this requirement remains on the books, it exerts a chilling effect on speech particularly when taken in conjunction of a host of disclosure requirements that the state does actively enforce. *Bates v. State Bar of Arizona*, 433 U.S. 350, 380 (1977) (“First Amendment interests are fragile interests, and a person who contemplates protected activity might be discouraged by the *in terrorem* effect of the statute.”)

4. Disclosing Donor Identity

The right to give anonymously is constitutionally protected. *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995); *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Vill. of Stratton*, 536 U.S. 150, 166-67 (2002). Compelled disclosure of the identity of donors infringes on the right to “privacy in group association” which is “indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). Compelled disclosure requirements are therefore subject to “exacting scrutiny.” The Supreme Court has equated “exacting scrutiny” and “strict scrutiny,” requiring speech restrictions under either standard to be narrowly tailored to serve a compelling interest. *See Williams-Yulee v. Fla. Bar*, 135 S. Ct. 1656, 1664-65 (2015). But at the very least exacting scrutiny requires a “substantial relation between the disclosure requirement and a sufficiently important governmental interest” such that

“the strength of the government interest is commensurate with the seriousness of the actual burden on First Amendment rights.” *Citizens United v. Schneiderman*, 882 F.3d 374, 382 (2d Cir. 2018) (internal quotation marks omitted). Connecticut’s requirement cannot survive under either strict scrutiny or the more relaxed “substantial relation” standard.

Connecticut law requires Mr. Kissel to keep and maintain information regarding all donors—regardless of the amount each donor contributes—including their name, address, date of donation, and donation amount for at least three years. In its response to Mr. Kissel’s letter, the Department acknowledges that it expects fundraisers to maintain this information about their donors. Mr. Kissel is then required to turn over these records to the Department on demand at any time. Kissel Declaration ¶ 36. This record keeping and disclosure requirement is constitutionally suspect.

This requirement has a chilling effect on the willingness of individuals to donate to JMC through Mr. Kissel. Kissel Declaration ¶ 48. As the Fifth Circuit explained, “[t]he public opprobrium, reprisals, and threats of reprisals that attend the airing of one’s affiliation with an unpopular cause or group are substantial disincentives to engaging in such affiliations.” *Familias Unidas v. Briscoe*, 619 F.2d 391, 399 (5th Cir. 1980).

There are many reasons that the prospective donors that Mr. Kissel will contact may wish to give to JMC only on the condition of anonymity.³ Kissel Declaration ¶ 48. Some donors may be afraid of generating controversy by donating to JMC. For instance, JMC aggressively critiques what it sees as a failed civic education model at both the university and high school setting. So those who are currently members of established scholarly organizations or unions that promote more traditional civic education may be reluctant to openly donate to a disruptive organization like JMC. JMC also strongly endorses a curriculum which inculcates values such as patriotism and reverence for our nation's founding fathers, and these values have increasingly come under attack. Many prospective donors also prefer giving anonymously in furtherance of religious beliefs regarding the virtue of anonymous giving,⁴ or in order to avoid receiving voluminous unsolicited requests for

³ Philanthropy Roundtable a non-profit that advocates for the interests of charities and their donors catalogued many of the reasons that donors may wish to remain anonymous in a report entitled *Protecting Donor Privacy: Philanthropic Freedom, Anonymity and the First Amendment*, https://www.philanthropyroundtable.org/docs/default-source/default-document-library/protecting-philanthropic-privacy_white_paper.pdf.

⁴ See Jewish Virtual Library, Charity (Tzedakah): Eight Levels of Charitable Giving (noting that well-known rabbi and scholar Maimonides explained that anonymous giving is among the highest forms of charity), <https://www.jewishvirtuallibrary.org/eight-levels-of-charitable-giving>; Matthew 6:1-4 (New International Version) ("Be careful not to practice your righteousness in front of others to be seen by them. If you do, you will have no reward from your Father in heaven. So when you give to the needy, do not announce it with trumpets, as the hypocrites do in the synagogues and on the streets, to be honored by others. Truly I tell you, they have received their reward in full. But when you give to the needy, do not let your left hand know what your right hand is doing, so that your giving may be in secret. Then your Father, who sees what is done in secret, will reward you."); Quran 2:271 ("If you disclose your Sadaqaat (almsgiving), it is well; but if you conceal them and give them to the poor, that is better for you.")

contributions. Regardless of the reason, the Constitution protects the right of these donors to give anonymously and the right of Mr. Kissel to receive anonymous donations.

Nor are prospective donors likely to be mollified by the Department's assertion that it has "has not historically required disclosure of the names and addresses of donors who wish to remain anonymous" or that it does "not anticipate that the department would compel production of anonymous donor records" without "a compelling enforcement reason." Kissel Declaration ¶ 48. Mr. Kissel is still required to maintain the names and addresses of those donors who wish to remain anonymous. And the decision of whether to demand and whether to disclose this information is left to the discretion of the Department. *See Citizens United v. Schneiderman*, 882 F.3d 374, 384 (2d Cir. 2018) (noting that if a government office "were to publicize donor lists, it would raise the stakes" and make it more likely "that people who are opposed to the mission of that group might make a donor suffer for having given to it."). Donors should not be required to place their desire for anonymity into the hands of government officials who may decide at any time that releasing this information will benefit an investigation or may decide to intentionally release the information to harm the organization.⁵ *See Citizens Union of City of New York v. Attorney Gen. of New York*, 408 F. Supp. 3d 478, 505 (S.D.N.Y. 2019) (concluding that an exemption

⁵ An IRS employee leaked the Schedule B of the National Organization for Marriage in 2012 in response to hostility to the group's involvement in the fight of over gay marriage in California. The IRS ended up paying \$50,000 in a lawsuit concerning this data breach. Mackenzie Weinger, "IRS pays \$50K in confidentiality suit," Politico (June 24, 2014).

that could be granted at the discretion of a state official was “cold comfort to a potential donor asked to run the risk of threats, harassment, or reprisals”). And donors are understandably skittish of promises of anonymity in light of high profile data breaches and instances of “inadvertent” disclosure which resulted in a severe backlash against donors who were promised anonymity.⁶ Moreover, even if the information is not released publicly the information would still be in the hands of government officials who might take adverse action as a result.

Requiring Mr. Kissel to maintain the names and addresses of donors, including those who wish to give anonymously, does not further a compelling state interest nor is the state’s interest “commensurate with the seriousness of the actual burden on First Amendment rights.” There is only a weak connection at best with any purported state interest in preventing fraud by paid fundraisers. And since Connecticut does not require charitable organizations that do not use a paid solicitors to maintain and supply records of donations, it strains credulity to suggest that the state has a sufficiently strong interest in knowing only the identity of donors who donate through paid fundraisers. The fact that the state does not require charities to provide this

⁶ The Supreme Court recently took up the cases of *Ams. for Prosperity Found. v. Becerra* and *Thomas More Law Ctr. v. Becerra*, No. 19-255, 2021 WL 77243, at *1 (U.S. Jan. 8, 2021). In these cases, there is evidence that 1,8000 confidential Schedule B’s had been inadvertently made public by the state of California. See *Ams. for Prosperity Found. v. Becerra*, 919 F.3d 1177, 1184-85 (9th Cir. 2019) (Ikuta J., dissenting from the denial of rehearing en banc) (noting that “state employees were shown to have an established history of disclosing confidential information inadvertently, usually by incorrectly uploading confidential documents to the state website such that they were publicly posted. Such mistakes resulted in the public posting of around 1,800 confidential Schedule Bs, left clickable for anyone who stumbled upon them.”).

information seriously “diminish[es] the credibility of the government’s rationale for restricting speech in the first place.” *City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994).

Moreover, any interference with the associational rights of donors to JMC must be “closely drawn to avoid unnecessary abridgement of associational freedoms.” *In re Primus*, 436 U.S. 412, 432 (1978). But it is clear that the state’s requirements could be tailored much more narrowly to reduce the chilling effect that it has on freedom of speech and association.

First of all, the state could consider alternatives to requiring the solicitor to maintain and provide these records altogether. For instance, to protect donors against fraud the state could require that the solicitor provide customers with receipts to memorialize their donation which would make it easy for the state to investigate any allegation of fraud.

The government's informational interest is also diminished when the amount of money involved is minimal. See *Sampson v. Buescher*, 625 F.3d 1247, 1261 (10th Cir. 2010) (“The expenditures in this case [\$782.02] ... are sufficiently small that they say little about the contributors' views of their financial interest in the annexation issue.”). But CT requires disclosure of all donors, regardless of the amount of the donation. Tracking every single donation is a significant burden on Mr. Kissel, with a correspondingly weak justification for the state. Accordingly, the state could require keeping records only when donations exceeds a certain threshold which would at least allow small gifts to be made anonymously (this is the approach that the IRS takes with Schedule B).

And even if the state can justify requiring solicitors to keep records of all donors, it could implement this requirement in several less restrictive ways. For instance, the state could require a paid solicitor to turn over records only in response to a search warrant or subpoena rather than on demand. The State could also require the Department to only request information about a specific donation and allow for the redaction of all names and addresses that are not the subject of the inquiry.

The state could also limit public disclosure in a way that further cabins the discretion of state officials, and put further data retention and security safeguards in place to ensure that the information is not accidentally disclosed to the public. In this respect Connecticut's law differs sharply from the one upheld by the Second Circuit in *Citizens United v. Schneiderman*, 882 F.3d 374, 382 (2d Cir. 2018), where the New York Attorney General was strictly prohibited from disclosing a charities schedule B. *Citizens United v. Schneiderman*, 882 F.3d 374, 384 (2d Cir. 2018) (noting that there was an "express prohibition" which "prevents the Attorney General from publicizing lists of donors"). The same is true with the Ninth Circuit's decision in *Americans for Prosperity Found. v. Becerra*, 903 F.3d 1000, 1007 (9th Cir. 2018), *cert. granted* 2021 WL 77243. In that case, the Court of Appeals actually granted a preliminary injunction preventing the California Attorney general from making a Charities Schedule B information public until the Attorney General adopted a regulation that would prevent public disclosure of these documents. *Id.* A preliminary injunction is similarly appropriate here because of the lack of meaningful safeguards to prevent the disclosure of donor information.

All of these more narrowly tailored measures would help secure the right to give anonymously to groups like JMC and mollify the concerns that Mr. Kissel will face when speaking to prospective donors. As it stands, Connecticut's disclosure requirement cannot withstand scrutiny and must be enjoined.

5. Vague and Overbroad Definition of Solicitation

Finally, whether Mr. Kissel is required to register and comply with the constitutionally offensive requirements of the Solicitation of Charitable Funds Act turns on whether Mr. Kissel engages in solicitation. This in turn hinges on whether Mr. Kissel's speech qualifies as an "indirect" request for a donation. Connecticut's definition of "solicitation" is void for vagueness and overbroad.

The Supreme Court has articulated a pair of closely related doctrines which protect against the potential chilling effect of laws that burden speech. *United States v. Williams*, 553 U.S. 285, 292 (2008). The first of these doctrines is void for vagueness which "is an outgrowth ... of the Due Process Clause of the Fifth Amendment" and applies when a law "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *Id.* The second is overbreadth which applies when a law "prohibits a substantial amount of protected speech." This doctrine applies when a "statute reaches too far" and targets speech that is not properly within its scope. *Id.* Laws that criminalize speech must be scrutinized especially closely to ensure that they do not sweep protected speech into their reach. *See Houston v. Hill*, 482 U.S. 451, 458 (1987) ("Criminal statutes must be scrutinized with particular care, those

that make unlawful a substantial amount of constitutionally protected conduct may be held facially invalid even if they also have legitimate application”); *Winters v. New York*, 333 U.S. 507, 515 (1948) (“The standards of certainty in statutes punishing for offenses is higher than in those depending primarily upon civil sanction for enforcement.”). Both of these doctrines apply to Connecticut’s charitable solicitation laws.

Connecticut’s definition of “solicitation” is void for vagueness because it lacks “terms susceptible to objective measurement.” *Keyishian v. Board of Regents of the University of the State of New York*, 385 U.S. 589, 604 (1967). Instead, Mr. Kissel and others looking to follow this law “must necessarily guess at its meaning and differ as to its application.” *Id.* This is illustrated in the Department’s response to Mr. Kissel’s letter. Mr. Kissel asked the Department whether in its judgment the paid solicitation requirements would apply to four conversations that he planned to engage in:

- Hosting a presentation for a small group of 5-10 donors where he discusses several organizations in the education sphere that are worthy of donations including the Jack Miller Center and mentions that these are all 501(c)(3) organizations that are happy to accept contributions.
- Participating in conversations between a prospective donor and a representative of the Jack Miller Center—either with or without a direct request for a contribution.
- Reaching out to prospective donors via email to discuss the Jack Miller Center and to offer to make an introduction to the officers of the

organization to discuss a donation.

- Calling a prospective donor to tell him that he should donate to the Jack Miller Center directing him to the organization's website to make a donation.

While the Department responded that the first and fourth scenarios would qualify as a solicitation and require registration, it demurred on whether the second and third examples would require registration. Kissel Declaration ¶ 32. The department stated that additional (unstated) facts would be required to determine whether these scenarios would qualify as solicitation. The Department also noted that its determination of whether it would prosecute an individual for violating the law would turn on a variety of subjective factors including its determination of the “purpose of the legal provision it seeks to enforce” and whether it felt that the solicitor “has made reasonable and best efforts to comply with Connecticut laws.” Kissel Declaration ¶ 37.

How is Mr. Kissel or anyone else hoping to speak in favor of a charity in Connecticut to know whether reaching out to a prospective donor to make an introduction or participating in a conversation to discuss a charity could result in liability for failing to register, when the Department charged with enforcing the statute cannot tell Mr. Kissel whether he will be subject to prosecution before he speaks? Mr. Kissel faces the choice of 1) silence; 2) speaking and risking criminal liability; or 3) being required to register and incur significant cost as well as the panoply of unconstitutional burdens that he complains about in this lawsuit. When

criminal penalties are on the line, far greater clarity is necessary than what Connecticut's law offers.

Connecticut's requirement that an individual engaged in "indirect" solicitation register as a paid solicitor is also unconstitutionally overbroad. Even if the state has an interest in preventing fraud and regulating direct requests for money from paid solicitors, the category of "indirect" solicitation sweeps within its scope a "substantial amount" of speech that is completely off limits. The Department confirmed in its response to Mr. Kissel's inquiry that even an innocuous call with a prospective donor and a representative of the Jack Miller Center—either with or without a direct request for a contribution—might be seen as an "indirect" request for money. As a result of this overbreadth, Mr. Kissel cannot talk to any of his friends or acquaintances in Connecticut about JMC, even if that conversation does not involve a request for a donation, because his role as a JMC fundraiser necessarily entails "indirect" requests for funding. Kissel Declaration ¶ 21. After all, Mr. Kissel's friends or acquaintances in Connecticut know that he has raised funds on behalf of other charitable causes and would at the very least assume that his work for JMC is a tacit or indirect suggestion that they should make a donation. And the more he discusses his work with JMC, the more likely it is that his friends or acquaintances in Connecticut will make this connection and take his conversations about JMC as "indirect" requests for a donation.

The State of Connecticut lacks a compelling interest (or any interest really) in regulating conversations between friends and acquaintances, especially those that do

not involve a direct request for a financial contribution. But because the definition of “indirect solicitation” is overly broad, Connecticut nevertheless chills this type of constitutionally protected speech.

III. Mr. Kissel Will Suffer Irreparable Harm Without an Injunction

If the Court agrees that Mr. Kissel is likely to succeed on the merits of any of his First Amendment claims, then the irreparable harm factor is also met. This is because “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013). Accordingly, “[w]here a plaintiff alleges injury from a rule or regulation that directly limits speech, the irreparable nature of the harm may be presumed. *Bronx Household of Faith v. Bd. of Educ. of City of New York*, 331 F.3d 342, 349 (2d Cir. 2003). That is the case here. Mr. Kissel has a concrete plan to engage in donor outreach on behalf of JMC in Connecticut and is prohibited from doing so by the requirements of Connecticut law that violate the First Amendment. Kissel Declaration ¶ 50. Moreover, because Mr. Kissel wishes to engage in speech which touches on current events and politics, this injury is particularly urgent. As the Second Circuit explained, “[t]he harm is particularly irreparable where, as here, a plaintiff seeks to engage in political speech, as timing is of the essence in politics and a delay of even a day or two may be intolerable.” *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013). A preliminary injunction is therefore critical for protecting Mr. Kissel’s right to speak and must be granted to prevent irreparable injury.

IV. Remaining Preliminary Injunction Factors Also Favor an Injunction

The “balance of hardships” tips substantially in Mr. Kissel’s favor. An allegation of a violation of a fundamental right tips the balance sharply in favor of the plaintiff. *See Legal Aid Soc’y v. Ass’n of Legal Aid Att’ys*, 554 F. Supp. 758, 761 (S.D.N.Y. 1982) (“[P]laintiff has alleged the deprivation of rights that are among the most sacred in our constitutional system Such adverse effect has been alleged, and constitutes in the Court’s view, a ‘balance of hardships tipping decidedly toward the party requesting relief.’”). That is particularly the case here. An injunction in favor of Mr. Kissel would not harm the state and would allow Mr. Kissel to speak freely and consistent with his First Amendment rights. In any event, “the Government does not have an interest in the enforcement of an unconstitutional law.” *New York Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 488 (2d Cir. 2013) (quoting *Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir 2003)). And “securing First Amendment Rights is in the public interest.” *Walsh* 733 F.3d at 488.

CONCLUSION

This Court should grant Adam Kissel’s request for a preliminary injunction so that he can exercise his First Amendment rights and speak to prospective donors without unconstitutional constraint.

DATED: February 8, 2021.

DANIEL M. ORTNER
JAMES M. MANLEY
Pacific Legal Foundation

/s/ Daniel M. Ortner

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Attorneys for Plaintiff
Adam Kissell

**admitted pro hac vice*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February 2021, I filed the foregoing electronically through the CM/ECF system, and caused the foregoing to be served on the following non-CM/ECF Registered Participants in the manner indicated:

Via process server through as follows:

Office of the Attorney General William Tong
165 Capitol Avenue
Hartford, CT 06106

Respectfully submitted,

DANIEL M. ORTNER
JAMES M. MANLEY
Pacific Legal Foundation

/s/ Daniel M. Ortner
DANIEL M. ORTNER

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ADAM KISSEL,

Plaintiff,

v.

MICHELLE H. SEAGULL, in her
official capacity as Commissioner of the
Connecticut Department of Consumer
Protection,

Defendant.

Civil Action No. 3:21-cv-00120-JAM

Case Filled: January 28, 2021

**DECLARATION OF ADAM KISSEL
IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION**

1. I am an individual citizen of the United States and live in Charleston, West Virginia.
2. I have extensive experience in higher education policy and philanthropy.
3. From 2017 to 2018 I served as the Deputy Assistant Secretary for Higher Education Programs at the U.S. Department of Education.
4. Prior to my time at the Department of Education, I worked at a variety of charitable organizations including the Foundation for Individual Rights in Education, the Institute for Humane Studies, the Charles Koch Foundation, and the Philanthropy Roundtable.
5. I am now a Senior Fellow at the Cardinal Institute for West Virginia Policy, a 501(c)(3) that researches, develops, and communicates free-market economic public policies for West Virginia.

6. Because of my experience in higher education policy and philanthropy, the Jack Miller Center (“JMC”), a Philadelphia-based 501(c)(3) that works with professors and educators to teach students about America’s founding principles and history, reached out to me to request my assistance in charitable fundraising related to JMC’s education projects.

7. I have long been an admirer and supporter of JMC and so I am eager to assist them.

8. JMC has agreed to pay me as an independent contractor to engage in charitable fundraising at an hourly rate for an average of 40 hours per month.

9. Under our current contract, I am responsible for identifying individuals interested in JMC’s mission who could become major donors. I am also responsible for identifying foundations that have given to similar programs. I will provide introductions to both prospective individual and foundation donors and will also help JMC with the development of its fundraising strategy. Some of these prospective donors and foundations are located in Connecticut.

10. If I were able to do so in a manner consistent with my First Amendment rights, I would also be responsible for fundraising directly from my contacts and engage other donor-focused communications. JMC wishes to employ me in this manner and would if it could do so in a manner consistent with its ability to avoid disclosure of confidential information and to secure the privacy of its donors and prospective donors.

11. Our mutual intention to engage in direct fundraising is expressed in our current contract which reads: “The Parties acknowledge a mutual desire that Kissel engage in direct solicitation and other donor-focused communications toward supporting the teaching of America's founding principles and history. The Parties recognize that various states restrict or prohibit this speech and that Kissel would engage in such speech but for the restrictions and prohibitions of various states.” My contract with JMC (including an Amendment dated February 2, 2021) is attached as Exhibit A.

12. If it were not for Connecticut’s laws that restrict my ability to engage in direct solicitation, I would contract with JMC to engage in direct solicitation and other donor-focused communications in Connecticut.

13. Connecticut is a high priority state for me to be able to engage in direct outreach to prospective donors. I have identified several large donors who live in Connecticut and have an interest in civic education. If it were not for the speech restrictive laws in Connecticut, I would reach out to them to educate them about JMC’s programs and encourage them to donate to JMC.

14. My personal connections and professional experience will allow me to be effective in my fundraising endeavors in Connecticut. I want to personally communicate the importance of JMC’s work to these people with whom I have prior relationships.

15. But I am not currently engaging in any of these activities in Connecticut on behalf of JMC because I recognize that many of my proposed activities would

require registration as a paid solicitor in Connecticut, which would subject me to a host of requirements that burden my right to speak freely.

16. I have been volunteering to raise money in Connecticut for another non-profit. But because of Connecticut's laws I am not able to be paid to raise money for this organization in Connecticut unless I register as a paid solicitor and restrict my speech.

17. There is at least one additional non-profit that would hire me to engage in charitable fundraising in Connecticut if I were registered as a paid solicitor. But because I am concerned about how Connecticut's laws burden my right to speak freely, I have not worked for this organization in Connecticut.

18. If I am required to register as a paid solicitor, I would be subject to a host of burdensome requirements. I would be required to:

- a. Register annually with the department and pay a \$500 fee;
- b. Post a \$20,000 surety bond;
- c. Provide the state with advance notice 20 days before the start of a solicitation campaign. This notice must include:
 - i. A copy of the fundraising contract with the organization which is then made publicly available;
 - ii. A solicitation notice which includes a description of the event and is also made publicly available; and
 - iii. The submission of "copies of campaign solicitation literature including the text of any solicitation to be made orally."

d. Disclose a variety of information every time I speak to a prospective donor including information regarding “the percentage of the gross revenue that the charitable organization shall receive.” A written confirmation of this information must also be sent to each contact who was spoken to orally.

e. File a report at the end of any solicitation campaign (or annually for longer campaigns) detailing the results of my campaign.

f. Maintain records of all contributors, including their names and addresses, and open up these records to the Department of Consumer Protection on demand.

19. If I do not comply with all of these requirements or fail to register, I may be punished with a fine of up to \$5,000 and up to one year in prison.

20. I am required to register as a paid solicitor if I engage in solicitation which is defined as “any request directly or indirectly for money, credit, property, financial assistance or other thing of any kind or value on the plea or representation that such money, credit, property, financial assistance or other thing of any kind or value is to be used for a charitable purpose or benefit a charitable organization.” Conn. Gen. Stat. Ann. § 21a-190a (3).

21. It is not clear what would qualify as an “indirect” request or solicitation. For instance, it isn’t clear to me whether I would be making an indirect request or solicitation if I speak about JMC to someone who knows I am working for JMC (without making an ask for money), participate in a phone call between a representative of JMC and a prospective donor (without making an ask for money),

or merely facilitate an introduction between JMC and a prospective donor (once again without making an ask for money).

22. Because of Connecticut's overly broad and vague definition of "indirect" solicitation, I have refrained from discussing JMC at all with any of my acquaintances in Connecticut, even informally, for fear of running afoul of the law.

23. On November 17, 2020, in an attempt to resolve some of my concerns, I sent a letter to Connecticut Department of Consumer Protection Commissioner Seagull and other officials at the Department requesting clarification as to how the requirements would apply to my speech on behalf of JMC. The letter is attached as Exhibit B.

24. I explained that it was not clear to me whether the following actions I planned to engage in would qualify as "solicitation" under Connecticut law:

a. Hosting a presentation for a small group of 5–10 donors where I discuss several organizations in the education sphere that are worthy of donations including the JMC and mention that these are all 501(c)(3) organizations that are happy to accept contributions;

b. Participating in conversations between a prospective donor and a representative of the JMC—either with or without a direct request for a contribution;

c. Reaching out to prospective donors via email to discuss the JMC and to offer to make an introduction to the officers of the organization to discuss a donation; and

d. Calling a prospective donor to tell him that he should donate to the JMC directing him to the organization's website to make a donation.

25. I explained that the requirement that I provide the Department with 20-day notice before beginning a fundraising campaign was deeply burdensome because I will engage in fundraising outreach in direct response to current events which bring education issues to the forefront of prospective donors' minds and that the requirement that I wait 20 days before speaking would severely constrain my constitutionally protected right to speak spontaneously about pressing matters of public concern without prior government restraint.

26. I also explained that the requirement that I provide copies of campaign solicitation literature was unconstitutional because I will present to prospective donors documents and information that are intended to be private. For instance, in order to persuade a prospective donor of the breadth or seriousness of support, I will discuss other donors who have already given to the organization. The identities of donors are often not appropriate for public disclosure. I also will explain to prospective donors plans that JMC has not yet made public.

27. I further explained that I did not wish to disclose my compensation agreement to each prospective donor whom I speak to.

28. Finally, I noted that the requirement to maintain records with the names and addresses of contributors would be unduly burdensome because donors often wish to give anonymously or confidentially for a variety of reasons.

29. I told the Department that I needed urgent clarification since failure to properly comply could result in a fine of \$5,000 and up to one year in prison.

30. On January 11, 2021, the Department responded to my letter. Its response is attached as Exhibit C.

31. The Department acknowledged that if I were to “directly or indirectly make a request for contribution” I would be required to register as a paid solicitor.

32. The Department stated that the first and fourth scenarios that I put forward in my letter would require registration and that additional (unstated) facts would be required to determine whether the second and third scenarios would qualify as solicitation.

33. The Department defended its authority to “require professional fundraisers to register and file regular reports on activities,” asserting that “the courts have repeatedly recognized the legitimacy of government efforts to inform the public and prevent fraud through such registration and disclosure requirements.”

34. The Department acknowledged that paid solicitors must “file a Solicitation Notice prior to the Commencement of each solicitation campaign.” The Department did not dispute that this notice must be filed 20 days before the start of a campaign or that the solicitor was required to submit campaign literature. But the Department asserted (without appeal to any source of authority) that “the Department does not require confidential materials to be submitted with the campaign solicitation literature.”

35. The Department did not dispute that Connecticut law requires a paid solicitor to disclose “at the point of solicitation the percentage of the gross revenue which the charitable organization will receive,” but stated that it has “not historically” enforced this requirement and that it “does not intend to make this an enforcement priority going forward.”

36. The Department noted that it “enforced the record retention requirement” but asserted that it “has not historically required disclosure of the names and addresses of donors who wish to remain anonymous.” The Department asserted that it did “not anticipate that the department would compel production of anonymous donor records” without “a compelling enforcement reason.” But it did not deny that I would nevertheless be required to take down and retain these names and addresses in case the Department did demand the information from me.

37. Finally, the Department declared that “[i]n deciding whether to take enforcement actions” it “takes many factors into consideration” such as the “purpose of the legal provision it seeks to enforce” and whether the solicitor “has made reasonable and best efforts to comply with Connecticut laws.”

38. The Department’s response is largely unsatisfying and unhelpful. The response from the Department did not resolve any of my concerns with the Connecticut law.

39. It is still unclear to me exactly how much I can say or do on behalf of JMC without registering as a paid solicitor. I have no way of knowing what factors the Department would consider in making that determination.

40. I am still required to provide 20-day advance notice before speaking to donors in Connecticut. This will significantly curtail my ability to speak effectively on behalf of JMC. I wish to engage in fundraising outreach in direct response to current events that bring education issues to the forefront of prospective donors' minds. For instance, earlier this year the death of Supreme Court Justice Ruth Bader Ginsburg and the ensuing debate revealed that many Americans lack a basic civic understanding of the role of the Supreme Court and the importance of lifetime tenure on the Court. This is an example of a prime opportunity to reach out to prospective donors to discuss why this event showed the need for a greater commitment to civic education. Connecticut's 20-day waiting period stifles my opportunity to discuss current events with prospective donors to illustrate the importance of civic education.

41. The Department's assurance that I will probably not be required to disclose confidential documents does not resolve my concerns. The state does not distinguish between confidential and non-confidential promotional material and offers no definition to distinguish between confidential and non-confidential material. The Department's informal assurance in response to my letter does not shed any light on what the Department considers confidential. And its response may not be enough to prevent it from subsequently changing its mind and charging me with violating Connecticut law. This uncertainty will therefore make me more reluctant to share information with prospective donors that I do not feel comfortable submitting to the Department.

42. Even if I am not required to submit confidential documents, the requirement to submit scripts and promotional material will still burden my speech in two ways.

43. First, the fact that I must submit my scripts and material to the state will necessarily make me more cautious or timid in how I speak. I plan to speak critically of existing government policies and programs as part of my promotion of JMC. For instance, I will bring my experience in government to bear to help persuade prospective donors that government-sponsored education solutions are unlikely to be adequate and that organizations like JMC need additional support. But I will be more cautious about such criticism if I know that I must submit this statement to the Department.

44. I also recently filed a Title IX complaint against Central Connecticut State University and will discuss that complaint and my perspective on that complaint with prospective donors. If I am required to share that information with the State of Connecticut, I will be unable to speak about my concerns in a candid and open fashion.

45. Second, this requirement will further limit my ability to speak spontaneously and freely. I do not intend to stick to a rigid script during conversations with prospective donors. To the contrary, I intend to adapt my remarks in real time in response to the interests of prospective donors in one-on-one conversations. But if I do so and depart from the script that I was required to submit 20 days in advance, then I risk an investigation and sanction by the Department. I will therefore feel

pressured to sticking to canned and stale remarks and will not be able to speak in a more candid and less constrained manner.

46. Disclosing my compensation agreement each time I speak with a prospective donor would be disruptive or alienating. The Department informed me that this was not an “enforcement priority,” but this requirement remains on the books and may be enforced against me at any time if I fail to comply.

47. Being required to retain and disclose the names and addresses of donors will significantly burden my ability to raise money for JMC and the right of donors to give anonymously.

48. There are many reasons that the prospective donors whom I will contact may wish to give to JMC only on the condition of anonymity. Some donors may be afraid of generating controversy by donating to JMC. There are several reasons why a donation to JMC might engender controversy. For instance, JMC aggressively critiques what it sees as a failing civic education model in both the university and high school settings. As a result, prospective donors who are currently members of established scholarly organizations or unions that are satisfied with such popular models of civic education may be reluctant to openly donate to a disruptive organization like JMC. JMC also strongly endorses a curriculum that inculcates values such as patriotism and reverence for the political genius of our nation’s founders, and these values have increasingly come under attack. Prospective donors may also prefer giving anonymously in furtherance of religious beliefs regarding the

virtue of anonymous giving, or in order to avoid receiving voluminous unsolicited requests for contributions.

49. Nor, in my experience, are prospective donors likely to be mollified by the Department's assertion that it "has not historically required disclosure of the names and addresses of donors who wish to remain anonymous" or that it does "not anticipate that the department would compel production of anonymous donor records" without "a compelling enforcement reason." I will still be required to maintain the names and addresses of those donors who wish to remain anonymous. And the decision of whether to demand and whether to disclose this information is left to the discretion of the Department. I cannot ask donors to place their desire for anonymity into the hands of government officials who may decide at any time that releasing this information will benefit an investigation or who may decide to intentionally release the information to harm the organization or donors. And donors are understandably skittish of promises of anonymity in light of high-profile data breaches and instances of "inadvertent" disclosure that resulted in severe backlash against donors who were promised anonymity. Moreover, even if the information is not released publicly, the information would still be in the hands of government officials who can take adverse action against either JMC or its donors as a result.

50. Connecticut's unlawful policies are causing me irreparable harm because they are preventing me from speaking freely to donors. An injunction would allow me to freely speak to prospective donors and would protect the privacy rights of prospective donors.

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

DATED: February 5, 2021.

A handwritten signature in cursive script that reads "Adam Kissel".

ADAM KISSEL
Plaintiff and Declarant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February, 2021, I filed the foregoing electronically through the CM/ECF system, and caused the foregoing to be served on the following non-CM/ECF Registered Participants in the manner indicated:

Via process server through as follows:

Office of the Attorney General William Tong
165 Capitol Avenue
Hartford, CT 06106

Respectfully submitted,

DANIEL M. ORTNER
JAMES M. MANLEY
Pacific Legal Foundation

/s/ Daniel M. Ortner
DANIEL M. ORTNER



Agreement for Services

This agreement is between The Jack Miller Center for Teaching America's Founding Principles and History (JMC) located at 3 Bala Plaza West, Suite 401, Bala Cynwyd, PA 19004 and Adam Kissel (Kissel). JMC and Kissel are together referred to as the Parties.

Term

The term of this agreement between JMC and Kissel shall commence on October 23, 2020; provided that, in those states where this contract must be filed prior to performing material services Kissel shall not begin performing any such services until the date such services may lawfully be commenced under the state's charitable solicitation law as further described in Exhibit A. The Parties recognize that time is of the essence in initiating the term.

Services to be Performed

Kissel agrees to provide the following services to JMC:

Individual Prospect Identification and Research. Kissel will provide introductions to individual donors he knows who might be interested in JMC's mission, with prior approval from JMC.

Kissel will also perform research to identify other individual major donor prospects for JMC and assist in introductions, providing reasonably comprehensive biographical information, which includes, when reasonable to procure, contact information, biography, age, family, political Interests, known philanthropy, religion, and estimated wealth.

Kissel will assist in the evaluation of prospects whom JMC comes up with.

Foundation Prospect Identification and Research. Kissel will review the program description and goals of JMC to understand its priorities; evaluate competition; and

identify foundations that align with its mission and have given to similar programs.

When reasonably possible, and with prior approval, Kissel will provide introductions and other information regarding his existing foundation contacts who might be interested in our mission.

Strategy Development. Kissel will develop strategies to help JMC connect and engage each prospect to the fullest reasonable degree, including meeting with JMC's staff to discuss these strategies. Meetings may include a weekly development meeting. Kissel will also aid JMC in its development of its academic strategy.

Payment

Kissel shall provide an average of 40 hours of contractual services per month. JMC shall pay Kissel at a rate of \$100 per hour.

Kissel will be responsible for all expenses required for the performance of the contractual services, except for all travel and production costs which will be the responsibility of JMC. Kissel shall get prior approval from JMC for all such expenses. JMC also will reimburse the costs incurred by Kissel pertaining to the State Registration paragraph during the term of this agreement, but only insofar as maintenance of such registrations is necessary to perform the services under this agreement.

Kissel shall submit a monthly invoice detailing hours worked and services provided. It shall include an itemized statement of any approved expenses. Payment shall be made by JMC within 10 days of receipt of invoice.

Kissel shall provide relevant information for payment processing, including address, banking information, and a W-9.

Confidentiality

Kissel recognizes that certain confidential information concerning JMC will be furnished by JMC to Kissel in connection with these services. Kissel agrees that he will not at any time thereafter divulge to any person or entity any confidential information during or after the term of this Agreement with regard to the personal, financial, or other affairs of JMC and that all such information shall be kept confidential and shall not in any manner be revealed to anyone, including donor contact information. Kissel agrees that he will not use any nonpublic information he learns through working with the JMC, including donor and donor prospect information, in any other context unless specifically approved by the JMC.

Terminating the Agreement

Either party may terminate this Agreement with or without cause upon thirty calendar days' written notice.

If canceled by Kissel, written notice shall be provided by Kissel via first class mail to Jack Guipre, Vice President, The Jack Miller Center, 3 Bala Plaza West, Suite 401, Bala Cynwyd, PA 19004.

If canceled by JMC, written notice shall be provided by JMC via first class mail to Adam Kissel at the following address: 2308 Washington Street East, Charleston, WV 25311.

JMC agrees to pay Kissel for the work performed up until the date of cancellation (the date of cancellation is at least 30 days after the date of notice).

Independent Contractor Status

The parties intend Kissel to be an independent contractor in the performance of the services. Kissel and JMC agree to the following rights consistent with an independent contractor relationship. Kissel will have the right to control and determine the methods and means of performing the contractual services. Kissel has the right to perform services for others during the term of this Agreement. Kissel will not be eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of JMC.

Kissel will not at any time solicit funds, assets, or property for charitable purposes, receive or have custody or control of funds, assets or property solicited for charitable purposes, or employ, procure or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes. The Parties acknowledge a mutual desire that Kissel engage in direct solicitation and other donor-focused communications toward supporting the teaching of America's founding principles and history, but the Parties recognize that various states prohibit this speech, so such speech is not contemplated under this agreement.

JMC exercises control and approval over the content, volume, and frequency of any solicitation.

State Registration

Kissel is registered as fundraising counsel in those states that require this registration in which he will be doing work on behalf of the JMC, such states to be mutually agreed between Kissel and JMC in writing prior to commencement of the Services. A copy of this contract will be submitted by Kissel to all states that require a copy before work

commences in accordance with each state's charitable solicitation law. The Parties agree that time is of the essence. The Parties understand that some states may require inclusion of specific disclosures in written solicitation material and that some states may require disclosure of the relationship between Kissel and JMC on JMC's own solicitation registration. Additional provisions required by certain states' laws are attached to this agreement as Exhibit A.

Statement of Charitable Purpose

JMC is an operating non-profit dedicated to the support of initiatives in education focused on cultivating a deeper understanding of the fundamental principles at the heart of American civic, cultural, and constitutional life.

The Jack Miller Center for Teaching America's Founding Principles and History

Mike Andrews, President

Jack Guipre, Vice President

Signature: *Michael Andrews*
Michael Andrews (Nov 3, 2020 18:22 EST)

Date: Nov 3, 2020

Signature: *Jack Guipre*
Jack Guipre (Nov 3, 2020 17:13 EST)

Date: Nov 3, 2020

Adam Kissel

Signature: *Adam Kissel*
Adam Kissel (Nov 4, 2020 10:31 EST)

Date: Nov 4, 2020

Exhibit A

STATE-REQUIRED PROVISIONS

The following provisions are needed to comply with the laws applicable to fundraising counsels in the state(s) listed below, and apply only to Kissel's fundraising consulting activities carried on in those states pursuant to this Agreement:

1. For the purposes of the following individual states only, services provided pursuant to this Agreement will commence in each of the respective states: ten (10) business days after this Agreement is filed with the Secretary of State of Pennsylvania; five (5) days after this Agreement is filed in the State of Florida.
2. For the purposes of the State of California only, the Agreement shall be modified to add the following sections:

Services will commence with respect to the solicitation of contributions for JMC ten (10) business days after filing of Form CT-11CF, Notice of Intent to Solicit for Charitable Purposes, with the California Attorney General.

JMC has the right to cancel the Agreement without cost, penalty, or liability for a period of ten (10) days following the date the Agreement is executed. JMC may cancel the Agreement by serving a written notice of cancellation on Kissel. If mailed, service shall be by certified mail sent to Kissel, return receipt requested, and cancellation shall be deemed effective upon the expiration of five (5) calendar days from the date of mailing. Notice shall be sufficient if it indicates that JMC does not intend to be bound by the Agreement. If JMC cancels the Agreement pursuant to this section, it shall mail a duplicate copy of the notice of cancellation to the Attorney General's Office Registry of Charitable Trusts, P.O. Box 903447, Sacramento, California 94203. Any funds collected after effective notice that the Agreement has been canceled shall be deemed to be held in trust for the benefit of JMC without deduction for costs or expenses of any nature. JMC shall be entitled to recover all funds collected after the date of cancellation.

Following the initial ten (10) day cancellation period, JMC may terminate the Agreement by giving thirty (30) days' written notice. If mailed, service of the notice shall be by certified mail, return receipt requested, and shall be deemed effective upon the expiration of five (5) calendar days from the date of mailing. In the event of termination pursuant to this section, JMC shall be liable for services provided by to the effective date of the termination.



Contract Amendment

This is an amendment to the Agreement dated October 23, 2020, between The Jack Miller Center for Teaching America's Founding Principles and History (JMC), located at 3 Bala Plaza West, Suite 401, Bala Cynwyd, PA 19004 and Adam Kissel (Kissel). JMC and Kissel are together referred to as the Parties. JMC and Kissel hereby agree that the contract is amended as follows:

Amendment to Term

The Agreement shall be effective for a term of twelve (12) months commencing on February 2, 2021, and expiring on January 31, 2022, unless renewed or earlier terminated by either party in accordance with the terms of the Agreement.

Other than the start and expiration date, the remainder of the "Term" provisions in the Agreement are retained.

Independent Contractor Status

To clarify the intent of the Parties, the Parties amend the second paragraph of the "Independent Contractor Status" section of the Agreement to read:

Kissel will not at any time solicit funds, assets, or property for charitable purposes, receive or have custody or control of funds, assets or property solicited for charitable purposes, or employ, procure or engage any compensated person to solicit, receive, or control funds, assets, or property for charitable purposes. The Parties acknowledge a mutual desire that Kissel engage in direct solicitation and other donor-focused communications toward supporting the teaching of America's founding principles and history. The Parties recognize that various states restrict or prohibit this speech and

that Kissel would engage in such speech but for the restrictions and prohibitions of various states.

The Jack Miller Center for Teaching America's Founding Principles and History

Mike Andrews, President

Signature: *Michael Andrews*
Michael Andrews (Feb 2, 2021 18:21 EST)
Date: Feb 2, 2021

Jack Guipre, Vice President

Signature: *Jack Guipre*
Jack Guipre (Feb 2, 2021 18:26 EST)
Date: Feb 2, 2021

Adam Kissel

Signature: *Adam Kissel*
Adam Kissel (Feb 2, 2021 18:01 EST)
Date: Feb 2, 2021

November 17, 2020
Via electronic mail

Michelle H. Seagull
Commissioner
Connecticut Department of Consumer Protection
Email: dcp.commissioner@ct.gov; michelle.seagull@ct.gov

Julianne Avallone
Director, Legal Division
Connecticut Department of Consumer Protection
Email: dcp.legal@ct.gov; julianne.avallone@ct.gov

Pamela Brown
Director, Investigations
Connecticut Department of Consumer Protection
Email: dcp.investigations@ct.gov; pamela.m.brown@ct.gov

Michael Elliott
Director, License Services
Connecticut Department of Consumer Protection
Email: dcp.licenseservices@ct.gov; michael.elliott@ct.gov

Dear Commissioner Seagull and Directors Avallone, Brown, and Elliott:

I am writing to seek clarity on several portions of Connecticut's laws and regulations regulating paid solicitation. I intend to engage in paid solicitation in Connecticut, and I am concerned that several of these regulations are incompatible with the First Amendment.

I have extensive experience in the realm of higher education. I served as the Deputy Assistant Secretary for Higher Education Programs at the U.S. Department of Education. Before my time at ED, I worked at the Foundation for Individual Rights in Education, the Institute for Humane Studies, the Charles Koch Foundation, and the Philanthropy Roundtable. I am now a Senior Fellow at the Cardinal Institute for West Virginia Policy, where I focus on state policy.

Because of my experience in the realm of higher education, several charitable organizations have asked for my assistance to raise funds for civic education programs. Two of these organizations have offered to pay me (one by the month and one by the hour) to, among other things, speak with prospective donors, including prospective donors in Connecticut, about the important work these organizations are doing to advance civic literacy in Connecticut and beyond.

Because I wish to communicate with prospective donors in Connecticut, I have closely reviewed Connecticut's laws and regulations concerning paid solicitation, and consulted with attorneys regarding the same. My review of these laws and regulations leaves me with several questions regarding their scope and their compatibility with the First Amendment. I understand that failure to comply with these laws could subject me to fines as much as \$5,000 and one year in prison. Because of the serious potential

Commissioner Michelle H. Seagull
Directors Julianne Avallone,
Pamela Brown, and Michael Elliott
November 17, 2020
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consequences for failing to comply with these laws and regulations, I am writing to seek clarification on several aspects of the law.

* * *

Questions concerning the scope of solicitation

Under Connecticut law, there are two types of solicitor, fund-raising counsel and paid solicitor. Conn. Gen. Stat. Ann. § 21a-190a. If I am considered a fund-raising counsel, then my obligations under the law are relatively minimal. I would not be required to register since I do not currently plan to handle client funds. Nor would I be required to file a bond. I would also not be subject to other invasive requirements discussed below, such as the obligation to submit scripts or promotional material to the Department. My classification is therefore a significant issue. And whether I qualify as a fund-raising counsel or a paid solicitor hinges on whether I “solicit” funds.

I intend to engage in the following conversations with potential donors. Please advise which of these qualifies as solicitation requiring my registration as a paid solicitor:

- 1) I plan to host a presentation for a small group of 5-10 prospective donors in which I discuss several charitable organizations in the education sphere that are worthy of their donations, including at least one of the organizations that is providing me compensation. I will not expressly direct the donors to make a donation, but I intend to mention the fact that these are 501(c)(3) organizations that are happy to accept contributions.
- 2) I plan to participate in conversations between a prospective donor and a representative of the organization that is paying me for my time, whether or not I directly ask for a contribution.
- 3) I plan to reach out to prospective donor contacts via email to discuss the charity that I am working for and to offer to make an introduction to an officer of the organization that I am working for in order for them to discuss a donation.
- 4) I plan to call a prospective donor and tell him why he should make a donation to the organization that is compensating me, and then direct him to the organization’s website to make a donation.

Twenty Days’ Notice Requirement and Disclosure of Campaign Literature or Scripts

If I am required to register as a paid solicitor, then I am troubled by several of the requirements of Connecticut law that require me to provide notice and information to the Department.

Commissioner Michelle H. Seagull
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First, I am troubled by the requirement that I must provide notice 21 days before beginning a fundraising campaign. Conn. Gen. Stat. Ann. § 21a-190f(c). I plan to engage in fundraising outreach in direct response to current events which may bring education issues to the forefront of prospective donors' minds. For instance, earlier this year the death of Supreme Court Justice Ruth Bader Ginsburg and the ensuing debate revealed that many Americans lack a basic civic understanding of the role of the Supreme Court and the importance of life tenure on the Court. This would have been a prime opportunity to reach out to prospective donors to discuss the death of Justice Ginsburg and explain why public debate about this event showed the need for a greater commitment to civic education. If I must wait 21 days to begin discussing this topic with prospective donors, then the news cycle will have moved on, and it may well be too late to illustrate the importance of civic education using that example. Complying with the 21-day notice requirement will severely constrain my constitutionally protected right to speak spontaneously about pressing matters of public concern without prior government restraint.

Second, the requirement that I provide the Department with "Copies of campaign solicitation literature, including the text of any solicitation to be made orally" is deeply troubling. Conn. Gen. Stat. Ann. § 21a-190f(c). As already discussed, I plan to adapt my approach in response to current events and circumstances and so I cannot provide a script 21 days before I reach out to donors. Indeed, each conversation is necessarily highly customized and tailored to the prospective donor, which makes filing a script impossible. Yet Connecticut law requires that I provide the text of any oral solicitation 21 days before speaking.

In addition, when reaching out to donors, I intend to present to them documents and information that are intended to be private. For instance, in order to persuade a prospective donor of the breadth or seriousness of support, I will tell him or her the identity of high net worth donors who have already given to the organization. This information is not appropriate for public disclosure. Donors will also be made privy to plans that have not yet been made public. The requirement that I provide a copy of campaign solicitation literature, which may then be made public, cuts against my right to freely share this information and cannot be reconciled with the Fourth Circuit's decision in *Telco Commc'ns, Inc. v. Carbaugh*, 885 F.2d 1225, 1235 (4th Cir. 1989), which struck down a similar law.

Disclosure Requirement

According to Connecticut law, I must disclose with each solicitation not only the fact that I am a paid solicitor but also "the percentage of the gross revenue which the charitable organization shall receive." Conn. Gen. Stat. Ann. § 21a-190f(e). I do not wish to discuss my compensation as part of each conversation that I have, and I cannot see how this requirement can be reconciled with the Supreme Court's decision in *Riley v. Nat'l Fed'n of the Blind of N. Carolina*, 487 U.S. 781 (1988).

Commissioner Michelle H. Seagull
Directors Julianne Avallone,
Pamela Brown, and Michael Elliott
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Prohibition on Anonymous Donations

Connecticut law requires me to maintain for three years records that contain the names and addresses of each contributor and to make this information available to the Department “upon request.” Conn. Gen. Stat. Ann. § 21a-190f. Donors often wish to give anonymously or confidentially for a variety of reasons, ranging from simple privacy to religious convictions against publicizing charitable giving. Indeed, the right to make anonymous contributions is protected by the First Amendment, *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995), and it appears that Connecticut law protects the ability of charitable organizations to accept anonymous donations. How can I be denied the ability to solicit anonymous donations?

* * *

I hope to begin reaching out to prospective donors in Connecticut immediately—without disclosing any scripts, campaign literature, the amount I am being paid, or the identity of donors with whom I meet who wish to be kept anonymous. Accordingly, I respectfully request that you clarify the scope of “solicitation” under Connecticut law, and confirm that the objectionable requirements I have identified above are not being enforced. If I do not receive a reply within the next thirty days, or if your reply fails to adequately address the serious constitutional issues raised above, then I must pursue other legal remedies to vindicate my rights.

Sincerely,

/s/

Adam Kissel



Adam Kissel <adamkissel@gmail.com>

Connecticut laws re paid solicitation

Arsenault, Cat <Cat.Arsenault@ct.gov>
To: "adamkissel@gmail.com" <adamkissel@gmail.com>

Mon, Jan 11, 2021 at 4:41 PM

Dear Mr. Kissel,

This is a response to your letter dated November 17, 2020 seeking clarification of several provisions of the Connecticut Solicitation of Charitable Funds Act. You stated that you intend to engage in paid solicitation and communicate with prospective donors on behalf of charitable organizations. Based on those statements, you would not be considered a "fund-raising counsel" in Connecticut because C.G.S. § 21a-190a(6) defines fund-raising counsels to include only persons who neither solicit contributions nor employ, procure or engage any person compensated to solicit contributions. If you perform any solicitation for a fee for any charitable organization, you would need to register as a paid solicitor.

C.G.S. § 21a-190a(3) defines "solicitation" as any request directly or indirectly for property on the representation that such property is to be used for a charitable purpose or benefit a charitable organization. Based on the facts provided in the four scenarios you presented, it would seem that you would be considered a paid solicitor in scenarios (1) and (4) because you would be indirectly requesting contributions in scenario (1), and directly requesting donations in scenario (4). As to scenarios (2) and (3), we would need additional facts to make a definite determination, but as a general matter, "solicitation" occurs only when you directly or indirectly make a request for contribution.

You raised concerns that several of the Connecticut laws concerning paid solicitors are incompatible with the First Amendment. Almost all of the states require professional fundraisers to register and file regular reports on activities, and the courts have repeatedly recognized the legitimacy of government efforts to inform the public and prevent fraud through such registration and disclosure requirements. *See Illinois ex rel. Madigan v. Telemarketing Assocs.*, 538 U.S. 600, 623 (2003); *Nat'l Fed'n of the Blind v. FTC*, 303 F. Supp. 2d 707, 721-722 (2004).

Currently the Department requires paid solicitors to register and file a Solicitation Notice prior to the commencement of each solicitation campaign. The form can be found here: https://portal.ct.gov/-/media/DCP/pdf/Applications_Added_2017/cpc58solicitationnoticeApplicationMay17pdf.pdf. However, the Department does not require confidential materials to be submitted with the campaign solicitation literature. The Department has not historically enforced the provision of C.G.S. § 21a-190f(e) that requires a paid solicitor to disclose at the point of solicitation the percentage of the gross revenue which the charitable organization will receive, and does not intend to make this an enforcement priority going forward. Additionally, although the Department enforces the record retention requirement under C.G.S. § 21a-190f(k), the Department has not historically required disclosure of the names and addresses of donors who wish to remain anonymous. Unless there was a compelling enforcement reason to require disclosure of such records, we do not anticipate that the Department would compel production of anonymous donor records.

The Department recognizes that some fact patterns do not fit squarely within the language of some of the charitable solicitation statutes. In deciding whether to take enforcement actions, the Department takes many factors into consideration, including the purpose of the legal provision it seeks to enforce and whether the paid solicitor is registered or has made reasonable and best efforts to comply with Connecticut laws. If you have any additional questions, feel free to contact me directly. E-mail is best, as we are currently working remotely.

Best regards,

Cat Arsenault

Cat T. Arsenault | Staff Attorney | Connecticut Department of Consumer Protection

450 Columbus Boulevard| Hartford CT 06103

T:860-713-6090 | Cat.Arsenault@ct.gov

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**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ADAM KISSEL,

Plaintiff,

v.

MICHELLE H. SEAGULL, in her
official capacity as Commissioner of the
Connecticut Department of Consumer
Protection,

Defendant.

Civil Action No. 3:21-cv-00120-JAM

Case Filled: January 28, 2021

**[PROPOSED] ORDER GRANTING
ADAM KISSEL'S MOTION FOR PRELIMINARY INJUNCTION**

This matter is before the Court on Plaintiff's application for a preliminary injunction prohibiting Defendant from enforcing certain portions of Connecticut's laws concerning charitable solicitors.

IT IS ORDERED that Plaintiffs' application for a preliminary injunction is GRANTED.

It is FURTHER ORDERED that Defendants are enjoined from enforcing the following provisions of Connecticut law against Plaintiff:

1. Conn. Gen. Stat. Ann. § 21a-190a (3) (application of the paid solicitor requirements to "indirect" solicitation)
2. Conn. Gen. Stat. Ann. § 21a-190f(c) (20-day advance notice requirement and the requirement that Mr. Kissel submit his scripts and promotional material to the Department)

3. Conn. Gen. Stat. Ann. § 21a-190f(e) (requirement that Mr. Kissel disclose his compensation agreement to prospective donors)

4. Conn. Gen. Stat. Ann. § 21a-190f(k) (requirement that Mr. Kissel keep and maintain the names and addresses of his donors)

IT IS SO ORDERED.

DATED: _____.

THE HON. JEFFREY A. MEYER
District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of February, 2021, I filed the foregoing electronically through the CM/ECF system, and caused the foregoing to be served on the following non-CM/ECF Registered Participants in the manner indicated:

Via process server through as follows:

Office of the Attorney General William Tong
165 Capitol Avenue
Hartford, CT 06106

Respectfully submitted,

DANIEL M. ORTNER
JAMES M. MANLEY
Pacific Legal Foundation

/s/ Daniel M. Ortner
DANIEL M. ORTNER

Kiren Mathews

From: CMECF@ctd.uscourts.gov
Sent: Monday, February 08, 2021 7:16 AM
To: CMECF@ctd.uscourts.gov
Subject: Activity in Case 3:21-cv-00120-JAM Kissel v. Seagull Motion for Preliminary Injunction

This is an automatic e-mail message generated by the CM/ECF system. Please DO NOT RESPOND to this e-mail because the mail box is unattended.

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U.S. District Court

District of Connecticut

Notice of Electronic Filing

The following transaction was entered by Ortner, Daniel on 2/8/2021 at 10:16 AM EST and filed on 2/8/2021

Case Name: Kissel v. Seagull
Case Number: [3:21-cv-00120-JAM](#)
Filer: Adam Kissel
Document Number: [13](#)

Docket Text:

MOTION for Preliminary Injunction by Adam Kissel. Responses due by 3/1/2021 (Attachments: # (1) Memorandum in Support, # (2) Affidavit, # (3) Exhibit A, # (4) Exhibit B, # (5) Exhibit C, # (6) Text of Proposed Order)(Ortner, Daniel)

3:21-cv-00120-JAM Notice has been electronically mailed to:

Alexander T. Taubes alextt@gmail.com

Daniel Ortner dortner@pacificlegal.org, IncomingLit@pacificlegal.org

James M Manley jmanley@pacificlegal.org

3:21-cv-00120-JAM Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

Document description: Main Document
Original filename: n/a

Electronic document Stamp:

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Document description:Memorandum in Support

Original filename:n/a

Electronic document Stamp:

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Document description:Affidavit

Original filename:n/a

Electronic document Stamp:

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Document description:Exhibit A

Original filename:n/a

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Document description:Exhibit B

Original filename:n/a

Electronic document Stamp:

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Document description:Exhibit C

Original filename:n/a

Electronic document Stamp:

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Document description:Text of Proposed Order

Original filename:n/a

Electronic document Stamp:

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