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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

THE SECOND AMENDMENT
FOUNDATION; THE CITIZENS
COMMITTEE FOR THE RIGHT TO KEEP
AND BEAR ARMS; LIBERTY PARK
PRESS; MERRIL MAIL MARKETING;
CENTER FOR THE DEFENSE OF FREE
ENTERPRISE; SERVICE BUREAU
ASSOCIATION; and ALAN GOTTLIEB,

Plaintiffs,

v.

ROBERT FERGUSON, individually and in his
official capacity as Washington Attorney
General; JOSHUA STUDOR, individually and
in his official capacity as Washington Assistant
Attorney General, Consumer Protection
Division; THE ATTORNEY GENERAL’S
OFFICE FOR THE STATE OF
WASHINGTON, and JOHN DOES 1-10,

Defendant.

No.

CIVIL RIGHTS COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF

I. INTRODUCTION

“If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.” *W. Virginia*

1 *State Bd. of Educ. v. Barnette*, 319 U.S. 624, 642 (1943). Our democratic system is built on
2 this foundational rule: every citizen may believe as her conscience dictates and advocate for
3 political change corresponding to those beliefs. “The right of citizens to inquire, to hear, to
4 speak, and to use information to reach consensus is a precondition to enlightened self-
5 government and a necessary means to protect it.” *Citizens United v. FEC*, 558 U.S. 310
6 (2010). This basic tenet sets the United States apart from repressive regimes in which the
7 powers of office are used to suppress opposition—official animosity to political speech
8 “offends the Constitution because it threatens to inhibit exercise of [these] protected right[s].”
9 *Crawford–El v. Britton*, 523 U.S. 574, 588, n. 10 (1998).

10 The people of Washington entrusted Washington Attorney General Bob Ferguson and
11 the attorneys beneath him with significant prosecutorial and investigatory powers so that they
12 could fairly enforce the laws enacted by the people’s elected representatives. But Mr.
13 Ferguson and his colleagues have overreached. They have used their powers to target citizens
14 simply because they do not share Mr. Ferguson’s personal beliefs. The Washington Supreme
15 Court recently reprimanded Mr. Ferguson for this practice when it held unanimously that his
16 office had improperly used the Washington Consumer Protection and Charitable Solicitations
17 Acts to suppress constitutionally protected speech with which he disagreed. But Mr. Ferguson
18 remained unrepentant, publicly stating *he is proud* that his improper investigation chilled the
19 exercise of constitutional rights.

20 Mr. Ferguson’s office has now set its sights on conservative activist Alan Gottlieb and
21 a number of nonprofit and other entities he is associated with. Each of these entities is
22 dedicated to causes with which Mr. Ferguson’s office disagrees. Specifically, the Second
23 Amendment Foundation (“SAF”) and the Citizens Committee for the Right to Keep and Bear
24 Arms (“CCRKBA”) are nonprofit organizations that advocate for civil rights related to self-
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1 defense, gun ownership, including by bringing litigation challenging laws they believe are
2 unconstitutional (in the case of SAF and CCRKBA) and by educating grass roots activists, the
3 public, legislators, and the media (in the case of CCRKBA). The Center for the Defense of
4 Free Enterprise (“CDFE”) is a nonprofit organization that educates the public regarding the
5 free enterprise system and individual economic and property rights, and it supports the legal
6 defense of those rights. The Service Bureau Association is a nonprofit organization that
7 provides support services to SAF, CCRKBA, and CDFE, so they can function economically.
8 Liberty Park Press (“LPP”) is a media company that operates a website dedicated to providing
9 news to the public so people can make informed decisions to protect their personal liberties.
10 And Merrill Mail Marketing (“MMM”) is a publishing company that has released pro-Second
11 Amendment titles. Mr. Gottlieb is an officer of SAF, CCRKBA, CDFE, and SBA. He is also
12 an owner of LPP and MMM.

13 As a consequence of their constitutionally protected advocacy, Mr. Gottlieb and these
14 entities (collectively, “the plaintiffs”) often find themselves at odds with Mr. Ferguson’s
15 office. In particular, Mr. Ferguson has often been a vocal proponent of gun control measures,
16 which have led the plaintiffs to clash with him in and out of court. Regardless of one’s views
17 on gun control policy, this oppositional give-and-take is the cause and result of a healthy
18 democracy—the plaintiffs’ advocacy facilitates the enactment of policy that accurately
19 represents the will of an informed electorate, and their litigation ensures the laws on the books
20 comply with constitutional guaranties. But Mr. Ferguson’s office does not see it that way.

21 Over the last two years, the Consumer Protection Division of the Attorney General’s
22 Office (“CPD”) has carried out an expansive, highly intrusive probe into the private affairs of
23 SAF, CCRKBA, CDFE, SBA, LPP, MMM, Mr. Gottlieb, and his family. It has served Civil
24 Investigative Demands (“CIDs”) on each of the plaintiffs, including two on Mr. Gottlieb,
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1 citing the same consumer protection laws Mr. Ferguson was recently found to have abused.
2 These CIDs demanded, on penalty of legal action, that the plaintiffs review and produce tens
3 of thousands of pages of private documents and detailed written responses to dozens of
4 interrogatories, in some instances concerning events that happened over 40 years ago. CPD
5 has already required Mr. Gottlieb to submit to a full day-long deposition, and it has scheduled
6 more, planning to take his testimony as a representative of SAF, CCRKBA, and SBA. It has
7 repeatedly scheduled, postponed, and rescheduled additional depositions of a SAF and
8 CCRKBA employee, Mr. Gottlieb's son, who works for SAF, and Mr. Gottlieb's wife, who
9 serves on the boards of MMM, SBA, CDFE, and LPP. And CPD has served CIDs on many of
10 SAF's vendors and business associates—in some cases accompanied by gag orders
11 prohibiting them from discussing the CIDs with SAF or the public—potentially doing lasting
12 damage to SAF's and other CID recipients' business relationships. For an extended period,
13 SAF and CCRKBA were unable to communicate with its long-time accountants, only later
14 learning that the accountants had gone silent due to one of the AG's gag orders. SAF and Mr.
15 Gottlieb have been forced to expend hundreds of man hours and over one hundred thousand
16 dollars in legal fees just responding to these demands, and there is no end in sight.

17 Throughout this protracted process, CPD has claimed to be investigating unlawful
18 conduct and enforcing the law. But in the *over two years* of investigating, it has never
19 identified any unlawful conduct whatsoever, nor asked or directed that any of the plaintiffs
20 make changes to their practices. In fact, CPD has never even been able to explain why it
21 initially suspected any of the plaintiffs had engaged in unlawful conduct. Public records
22 requests reveal—and CPD all but admits—that it has received virtually no consumer
23 complaints regarding SAF or any other CID recipients. When pressed for information about
24 what the plaintiffs are suspected to have done wrong or should be doing differently, CPD's
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1 attorneys have offered only a vague suggestion that some unidentified entity or entities
2 associated with Mr. Gottlieb have not properly registered as a charity with the Secretary of
3 State, or have registered but have failed to make complete disclosures with their registrations.
4 Plaintiffs have examined their own records, reported back to CPD that they cannot tell what
5 CPD is talking about, and requested that CPD stop being so cryptic and just explain what this
6 interminable investigation is really about. CPD has provided no answer because it has no
7 answer.

8 As the months have worn on without any justification emerging for the origin or
9 continuation of CPD's comprehensive probe, it has become increasingly clear that CPD has
10 never had any reasonable basis for suspecting any of the plaintiffs of violating the statutes
11 listed in its CIDs—or any other laws for that matter. Instead, CPD singled out SAF and Mr.
12 Gottlieb for invasive and expensive harassment because of their political beliefs and activities,
13 including their positions on gun control, their outspoken public criticism of Mr. Ferguson, and
14 their legal challenges to his actions and policies. The other plaintiffs have been dragged into
15 the investigation because of their support for and association with SAF and Mr. Gottlieb's
16 protected free speech activities. The agency's investigation is nothing more than a fishing
17 expedition, conducted in the hope of turning up dirt on the Attorney General's political
18 opponents, furthering Mr. Ferguson's political ambitions, and disrupting the lives of
19 individuals Mr. Ferguson dislikes.

20 The wrongful nature of these actions transcends politics. Regardless of one's policy
21 preferences or partisan affiliation, the official misuse of legal process to pursue private
22 vendettas and stamp out dissent is incompatible with a free democratic society. Defendants'
23 actions are illegal and unconstitutional, and they should not be allowed.
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II. PARTIES

1
2 1. Alan Gottlieb is the Founder and Executive Vice President of SAF. Born in
3 1947 in Los Angeles, California, he has a degree in nuclear engineering. Mr. Gottlieb has
4 been involved in the gun rights movement since the early 1970s. In addition to founding SAF
5 in 1974, Mr. Gottlieb has also been involved in a number of other pro-gun and conservative
6 organizations and initiatives. He is the chairman of CCRKBA; a Director of the American
7 Conservative Union; a Director of the American Political Action Committee; a Director of
8 Protect Our Gun Rights; a Director of International Association to Protect Civilian Arms
9 Rights; a Director of CDFE; a Director of SBA; a Director and owner of MMM, through
10 which he has published pro-Second Amendment titles and other political titles by himself and
11 others; a Director of Jews for the Preservation of Firearms Ownership; a Director and owner
12 of LPP; and a Director of Keepandbeararms.com., Inc. Mr. Gottlieb is a frequent
13 commentator on gun rights issues online and on radio and television, and has been quoted in
14 numerous media outlets, including The New York Times, The Washington Post, and CNN.
15 He has also authored or co-authored several books on gun rights and related issues.

16 2. SAF is a nonprofit 501(c)(3) corporation organized under the laws of
17 Washington and headquartered in Bellevue. Founded in 1974, SAF's mission is to defend and
18 promote the right of law-abiding citizens to own and use firearms for self-defense, hunting,
19 and other lawful purposes. The organization's activities include legal action to protect Second
20 Amendment rights, public education campaigns, and support for research into the benefits of
21 firearms ownership. It funds these activities through donations from its members and
22 supporters nationwide, including thousands in Washington State.

23 3. CCRKBA is a 501(c)(4) advocacy group organized under the laws of
24 Washington and headquartered in Bellevue. Founded in 1971, Mr. Gottlieb has served as
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1 CCRKBA's chairman since 1972. CCRKBA is a lobbying organization. Like SAF, it is
2 dedicated to defending and promoting the right of law-abiding citizens to own and use
3 firearms. Unlike SAF, CCRKBA's efforts center on actively influencing firearms policy at all
4 levels of government through political activities, including meeting with legislators and
5 donating to and supporting particular political initiative campaigns.

6 4. LPP is a closely held media corporation that focuses on news and commentary
7 related to firearms, Second Amendment rights, and other issues related to personal freedom
8 and individual liberties. The company was founded by Mr. Gottlieb in 2013; it is organized
9 under the laws of Washington State and headquartered in Bellevue. LPP owns and operates a
10 website and publishes content including news articles, opinion pieces, and analysis of issues
11 related to firearms, self-defense, politics, and other topics of interest to readers who value
12 individual liberties and personal freedom.

13 5. MMM is a book publisher that has published pro-Second Amendment titles by
14 Mr. Gottlieb and others.

15 6. CDFE is a 501(c)(3) nonprofit organization organized under the laws of
16 Washington State and headquartered in Bellevue. Founded in 1976, it is dedicated to
17 advocating for free-market principles and limited government. The organization seeks to
18 achieve these goals through research, education, and advocacy on a range of economic,
19 environmental, and political issues.

20 7. SBA is a nonprofit corporation registered in Washington State. SBA provides
21 its members, SAF, CCRKBA, CDFE, and Merrill Associates (a sole proprietorship of Mr.
22 Gottlieb) with data processing, IT services, accounting, caging, group health insurance, long
23 term care insurance, large machine purchases or leases and other services. By bulk purchasing
24 and sharing the expense of services and equipment, SBA allows its members to access goods
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1 and services that would not otherwise be financially feasible. All services are provided at cost
2 and billed to members according to usage.

3 8. Defendant Robert Ferguson is the Attorney General of the State of
4 Washington. First elected in 2012, he is the State's chief legal officer and serves as the legal
5 advisor to the governor, state agencies, and other elected officials. *See* RCW 43.10.030(5). He
6 is also responsible for defending state officials sued in their official capacity, and in this role
7 he frequently defends the constitutionality of state statutes. *Id.* at (2). He is responsible for
8 enforcing the laws of the state, including by investigating suspected violations and bringing
9 legal action where appropriate. He is sued in both his individual and official capacity.

10 9. Joshua Studor is an Assistant Attorney General within the Consumer
11 Protection Division of the Washington Attorneys General Office. As Assistant Attorney
12 General, he holds office at the Attorney General's Pleasure (subject to any collective
13 bargaining agreement). RCW 43.10.060. CPD is responsible for protecting the rights of
14 consumers in Washington State, including by enforcing state and federal consumer protection
15 laws and investigating and prosecuting businesses and individuals that engage in unfair or
16 deceptive practices. Mr. Studor is leading the investigation of Mr. Gottlieb and SAF. He is
17 sued both individually and in his official capacity.

18 10. The Washington Attorney General's Office is the state agency presently
19 headed by Mr. Ferguson. It is tasked with assisting him and carrying out his duties as
20 Washington Attorney General.

21 **III. JURISDICTION AND VENUE**

22 11. This Court has original subject matter jurisdiction over these claims pursuant
23 to RCW 2.08.010.

1 12. Venue is proper under RCW 4.12.020(2) and RCW 4.92.010(2) because the
2 events giving rise to these claims occurred within this county.

3 **IV. STATEMENT OF FACTS**

4 **A. This is not the first of Bob Ferguson's unfounded attacks on political opponents**
5 **or unfounded use of his power under the Consumer Protection Act.**

6 13. Washington Attorney General Bob Ferguson has made his antipathy to
7 conservative policies and politicians a mark of pride throughout his time in office. Even
8 before listing his legal background and education or accomplishments in office, for example,
9 Mr. Ferguson's campaign website proudly boasts of his "legal record against the Trump
10 Administration," noting that he filed "more than 80 lawsuits" against it.¹ Relatedly, Mr.
11 Ferguson has frequently utilized the CPD to position himself politically and identify his
12 political opposition. The same site states that "Bob has made consumer protection a
13 cornerstone of the Attorney General's Office – cracking down on powerful interests that don't
14 play by the rules." It further notes that "Bob has doubled the size of the Consumer Protection
15 Division in the Attorney General's Office."

16 14. Mr. Ferguson's political beliefs have repeatedly led him and his office to
17 overzealousness. When discussing his record against the Trump administration, for instance,
18 his website explains that less than half of the "more than 80 lawsuits" resulted in "wins's [sic]
19 under Bob's leadership," indicating a majority of the suits were unfounded.
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23 ¹ About Bob Ferguson, Bob Ferguson Democrat Attorney General, [https://bobferguson.com/](https://bobferguson.com/about/)
24 [about/](https://bobferguson.com/about/) (last visited Mar. 14, 2023). Since the initial filing of this suit in federal court, Mr. Ferguson's
25 campaign website has been updated to reflect his new gubernatorial campaign, though the new site
contains many similar statements to the previous one.

1 15. On May 2, 2023, Mr. Ferguson announced that he is running for Governor of
2 Washington. He specifically touted his repeated battles with conservative causes in the
3 announcement, stating, “From the Trump Admin & gun lobby to anti-abortion extremists &
4 corporate interests, I’ve taken on powerful adversaries, and won. That’s just the start. I’m
5 proud to announce my exploratory campaign for WA Gov.”²

6 16. CPD in particular has become overenthusiastic under Mr. Ferguson’s
7 leadership, pursuing frivolous investigations and prosecutions of law-abiding citizens and
8 their business ventures. This tendency was highlighted in the Washington Supreme Court’s
9 recent decision in *Washington v. TVI, Inc.*, 524 P.3d 622, 627 (Wash. 2023). The case
10 involved Value Village, a for-profit thrift store chain whose business model consisted of
11 paying non-profit charities for community-donated goods that it then resold or recycled,
12 providing the charities with a reliable stream of income while simultaneously obtaining its
13 stock for less than typical wholesale prices. *Id.* First, though the Washington Secretary of
14 State’s office had contacted Value Village *three times* regarding its status under the
15 Washington Charitable Solicitations Act and each time determined that the business was *not*
16 required to register with the State as a commercial fundraiser, CPD wrote to Value Village in
17 November 2014 demanding that it register and renew its status annually. *Id.* at 628. Value
18 Village promptly complied, but this was not the end of CPD’s harassment.

19 17. Value Village was very open regarding its status as a for-profit business. Its
20 website and in-store signs and brochures described its business model in detail, much of its
21 marketing explicitly described it as a “for-profit thrift store chain,” and Value Village
22

23 ² David Gutman and Jim Brunner, *WA Attorney General Bob Ferguson announces campaign*
24 *for governor*, SEATTLE TIMES (May 2, 2023), <https://www.seattletimes.com/seattle-news/politics/wa-attorney-general-bob-ferguson-announces-campaign-for-governor/>.

1 employee’s regularly made announcements over the stores’ public address system stating that
2 it was a for-profit business. *Id.* at 627-28. Despite this transparency, CPD subjected Value
3 Village to a highly invasive three-year long investigation before bringing a lawsuit against it
4 alleging that it had violated the Consumer Protection Act (“CPA”) by misleading customers
5 into believing it was itself a non-profit or charitable organization. *Id.* at 628.

6 18. The Washington Supreme Court ruled that the CPD’s actions were
7 unconstitutional. CPD’s “broad allegations ‘impermissibly chill[ed] protected speech,’” the
8 Court held, and even in the one instance in which CPD had alleged a valid claim, that claim
9 was “not supported” by any proof whatsoever. *Id.* at 638-39 (citing *Illinois, ex rel. Madigan v.*
10 *Telemarketing Associates, Inc.*, 538 U.S. 600, 619 (2003)). The Court thus remanded the case
11 to the trial court with instructions to dismiss CPD’s CPA claims and rule on whether Value
12 Village was entitled to the attorney fees and costs it had incurred defending against the
13 unconstitutional charges. *Id.* at 639.

14 19. Mr. Ferguson remained uncontrite despite the Supreme Court’s admonition.
15 Value Village had altered its marketing during the course of CPD’s investigation in a futile
16 attempt to placate the agency, and though the Washington Supreme Court’s ruling made clear
17 the pressure CPD had exerted was unconstitutional, Mr. Ferguson bragged about its results:
18 “‘We are proud that our investigation led Value Village to change its marketing practices and
19 more clearly disclose that it is a for-profit company,’ Ferguson said.”³

20 20. On remand in *Value Village*, CPD argued that its actions should not be
21 punished with an attorney fee award because “public policy favors robust enforcement of the
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23 ³ Gene Johnson, Associated Press, *Court rejects deception charges against Savers Value*
24 *Village*, Seattle Times (Feb. 23, 2023), <https://www.seattletimes.com/seattle-news/wa-supreme-court-rejects-states-allegations-against-savers-value-village/>.

1 CPA.” Order, Dkt. 352, *State v. TVI, Inc. d/b/a Value Village*, No. 17-2-32886 (King. Cnty.
2 Sup. Ct. Aug 9, 2023). This court disagreed. In its order, the court stated that CPD’s “conduct
3 raise[d] concerns about government overreach” and specifically cited CPD’s multi-year
4 investigation in which it refused to “identify any claims or practices that [CPD] asserted
5 [Value Village] should change.” *Id.* at 8, 16. The trial court had previously found that, “if the
6 purpose of the [Charitable Solicitations Act] is to prevent public harm before it occurs, or as
7 early as possible, the State’s decision not to communicate with [Value Village] conflicts with
8 this purpose.” *Id.* at 5. The court also noted that, even though CPD “admitted it had no
9 evidence and could not show that any consumer or donor was in fact ever misled or harmed
10 by [Value Village] advertising or marketing,” it nonetheless had “issued press releases
11 asserting that [Value Village] had ‘deceived’ Washington consumers and did not pay its
12 charity partners for many or most donated goods,” which both the trial and multiple appellate
13 courts found to be false. *Id.* at 9, 22. It further observed that the CPD had “denigrated” Value
14 Villages First Amendment defense and “continually requested reconsideration of rulings,
15 despite unanimous opinions rejecting [CPD’s] arguments and holding that [its] actions
16 violated established First Amendment principles.” *Id.* at 9, 18. This court stated that CPD
17 “appear[ed] unchastened by these higher court decisions,” and described its attitude towards
18 Value Village’s First Amendment rights as “dismissive.” *Id.* at 18-19. Ultimately, this court
19 granted Value Village’s motion for attorney fees; final approval of the over \$5 million bill—
20 which includes Value Village’s substantial costs associated with responding to CPD’s
21 overzealous investigation—is pending as of this filing.

1 **B. Mr. Ferguson’s Office has Unconstitutionally Targeted and Harassed Mr.**
2 **Gotlieb and SAF because of their Political Beliefs**

3 21. As he boasted in his gubernatorial announcement, gun control policy has been
4 one of Mr. Ferguson’s primary focuses while in office. He has championed a series of state
5 legislative enactments restricting citizens’ rights to keep and bear firearms, including a ban on
6 the sale of magazines holding more than 10 rounds,⁴ a ban on the manufacture or possession
7 of 3D-printed firearms,⁵ a ban on the possession of semi-automatic rifles, and measures that
8 would hold gun manufacturers and dealers liable for damages caused by unrelated individuals
9 using their products.⁶ When county sheriffs expressed doubts over whether certain new gun
10 control measures were constitutional, Mr. Ferguson personally issued an open letter warning
11 that the sheriffs may be held liable if they failed to enforce them.⁷

12 22. Mr. Ferguson received an award from the anti-gun rights organization
13 CeaseFire in 2017 and spoke at a CeaseFire live event in 2019, and he has tweeted out praise
14 for the Alliance for Gun Responsibility, Grandmothers Against Gun Violence, and CeaseFire.
15 In 2018, Mr. Ferguson broke from tradition and endorsed a ballot measure generated by the
16 Alliance for Gun Responsibility aimed at raising the age to purchase a semi-automatic rifle.

17 ⁴ Washington State Office of the Attorney General, *AG Ferguson: With historic House vote,*
18 *Legislature bans sale of high-capacity magazines in Washington* (Mar. 4, 2022),
<https://www.atg.wa.gov/news/news-releases/ag-ferguson-historic-house-vote-legislature-bans-sale-high-capacity-magazines>.

19 ⁵ Washington State Office of the Attorney General, *Attorney General Ferguson’s bill to ban*
20 *3D-printed “ghost guns” passes Legislature* (Apr. 23, 2019), <https://www.atg.wa.gov/news/news-releases/attorney-general-ferguson-s-bill-ban-3d-printed-ghost-guns-passes-legislature>.

21 ⁶ Washington State Office of the Attorney General, *AG Ferguson, Gov. Inslee partner to*
22 *propose two firearms safety measures* (Dec. 19, 2022), <https://www.atg.wa.gov/news/news-releases/ag-ferguson-gov-inslee-partner-propose-two-firearms-safety-measures>.

23 ⁷ David Gutman, *Sheriffs who don’t enforce Washington’s new gun law could be liable, AG*
24 *Bob Ferguson says*, *Seattle Times* (Feb. 12, 2019), <https://www.seattletimes.com/seattle-news/politics/sheriffs-who-dont-enforce-washingtons-new-gun-law-could-be-liable-ag-bob-ferguson-says/>.

1 Mr. Ferguson has also appeared as a speaker at events put on by the Alliance for Gun
2 Responsibility, which has praised his work online.

3 23. As a consequence of the enactments discussed above and Mr. Ferguson's
4 policy preferences more broadly, Mr. Ferguson's office has frequently clashed with SAF and
5 Mr. Gottlieb.

6 24. Most significantly, SAF, CCRKBA, and CDFE have often challenged these
7 gun control measures in court, arguing that they violate the Second Amendment or other
8 constitutional guarantees. Mr. Ferguson and his office are responsible for defending the
9 constitutionality of Washington laws, and Mr. Gottlieb and Mr. Ferguson have consistently
10 found themselves on opposite sides of the courtroom. Counting appeals, they have been
11 opposing parties in at least eight different cases since Mr. Ferguson took office. *See N.W. Sch.*
12 *of Safety v. Ferguson*, No. 3:14-cv-6026-BHS (W.D. Wash. 2014); *N.W. Sch. of Safety v.*
13 *Ferguson*, No. 15-35452 (9th Cir. 2015); *Washington v. United States*, No. 2:18-cv-01115-
14 RSL (W.D. Wash. 2018); *Mitchell v. Washington*, no. 3:18-cv-05931-RBL (W.D. Wash.
15 2018); *Washington v. Def. Distributed*, No. 20-35030 (9th Cir. 2020); *Washington v. Second*
16 *Amendment Foundation*, No. 20-35064 (9th Cir. 2020); *Mitchell v. Atkinson*, No. 20-35827
17 (9th Cir. 2022); *Sullivan v. Ferguson*, No. 3:22-CV-05403-DGE (W.D. Wash. 2022). The
18 number is even larger counting cases involving similar gun control laws in other states in
19 which Mr. Ferguson's office has filed amici briefs opposing SAF's position or vice versa. *See,*
20 *e.g., Wrenn v. District of Columbia*, Nos. 16-7025& 16-7067 (D.C. Cir. 2016); *Worman v.*
21 *Healy*, No. 18-1545 (1st Cir. 2018); *Duncan v. Becerra*, No. 19-55376 (9th Cir. 2019);
22 *Duncan v. Bonta*, No. 19-55376 (9th Cir. 2019). Indeed, Mr. Ferguson considers his
23 opposition to SAF a personal accomplishment. When the governor signed a law restricting
24 the sale of assault weapons on April 25, 2023, Mr. Ferguson took to the television cameras
25

1 that same day to brag that his office supposedly had an undefeated record in litigation against
2 SAF and looked forward to litigating against it again.

3 25. The conflict between Mr. Ferguson’s office and SAF has also played out in the
4 media. Mr. Gottlieb, SAF, and other Alan Gottlieb-associated entities have released public
5 statements criticizing Mr. Ferguson’s views on gun control and the legislation he champions.
6 *See, e.g.,* CCRKBA, Press Release, *CCRKBA Says Court Ballot Title Changes To WA Gun*
7 *Initiative A ‘Small Victory* (Jun. 07, 2018);⁸ SAF, Press Release, *SAF-NRA Amends Challenge*
8 *to I-1639; Anti-Gunners Wrong, Lawsuit Remains* (Feb. 14, 2019);⁹ SAF, Press Release, *Fed.*
9 *Judge Denies Motion by Washington A.G. to Compel SAF Discovery in 3D Case* (Mar. 25,
10 2019);¹⁰ Dave Workman, *We Definitely Plan to Appeal Says SAF on Fed. Court Ruling*,
11 *thegunmag.com* (Sept. 2, 2020);¹¹ Dave Workman, *Exclusive: Spokane County Sheriff Rips*
12 *AG Ferguson, I-1639*, Liberty Park Press (Feb. 13, 2019);¹² Dave Workman, *Anti-gun WA*
13 *Atty. General Ferguson Endorses Gun Control Measure*, Liberty Park Press (Apr. 25,
14 2018);¹³ Gun-rights advocates file lawsuit to block I-1639, *The Daily World* (Nov. 16,
15 2018).¹⁴ Mr. Ferguson has returned the favor, publicly accusing SAF of attempting to

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17 ⁸ <https://www.prnewswire.com/news-releases/ccrkba-says-court-ballot-title-changes-to-wa-gun-initiative-a-small-victory-300662117.html>

18 ⁹ <https://www.saf.org/saf-nra-amends-challenge-to-i-1639-anti-gunners-wrong-lawsuit-remains/>

19 ¹⁰ <https://www.saf.org/fed-judge-denies-motion-by-washington-a-g-to-compel-saf-discovery-in-3d-case/>

20 ¹¹ <http://www.thegunmag.com/we-definitely-plan-to-appeal-says-saf-on-fed-court-ruling/>

21 ¹² <https://www.libertyparkpress.com/exclusive-spokane-county-sheriff-rips-ag-ferguson-i-1639/>

22 ¹³ <https://www.libertyparkpress.com/anti-gun-wa-atty-general-ferguson-endorses-gun-control-measure/>

23 ¹⁴ <https://www.thedailyworld.com/northwest/gun-rights-advocates-file-lawsuit-to-block-i-1639/>

1 “undermine the will of the voters” with its legal challenges to the constitutionality of gun
2 control laws. Jim Camden, *Washington’s Voter-Approved Semiautomatic Rifle Restrictions*
3 *Constitutional, Judge Rules*, Spokesman-Review (Sept. 1, 2020).¹⁵

4 26. Regardless of one’s opinion on constitutional rights under the Second
5 Amendment, there’s no dispute that the actions of Mr. Gottlieb, SAF, and the other CID
6 recipients are constitutionally protected conduct. The Constitution mandates Mr. Ferguson’s
7 disagreements with plaintiffs over the Second Amendment and other laws be resolved in
8 courts of law and his policy disputes settled in the court of public opinion. But Mr. Ferguson’s
9 office has adopted a different tactic.

10 27. At an unidentified time more than two years ago, CPD began to investigate Mr.
11 Gottlieb and SAF in much the same way it had Value Village. Upon information and belief,
12 this investigation was begun at Mr. Ferguson’s instruction and/or as a consequence of policies
13 and customs he implemented and is responsible for. Despite the public records requests
14 discussed below, Mr. Gottlieb and SAF have been unable to determine when the investigation
15 began.

16 28. By June 4, 2021, CPD had obtained a gag order from King County Superior
17 Court that had the practical effect of totally preventing SAF’s accountants from speaking with
18 SAF, interrupting SAF’s ability to timely complete audits of its finances. Apparently, CPD
19 served the accountants with CIDs requesting sweeping information regarding SAF and Mr.
20 Gottlieb and prohibiting them from notifying SAF or otherwise discussing CPD’s demands.
21 The legal authority for such a prior restraint of speech is unclear.

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24 ¹⁵ <https://www.spokesman.com/stories/2020/aug/31/semiautomatic-rifle-restrictions-constitutional-ju/>

1 29. Within a few months, CPD served similar demands and gag orders on an array
2 of other third parties, including the essential vendors that make the activities of SAF and the
3 other CID recipients possible. These included everyone from SAF’s webhost to the utility
4 company that provides its electricity.

5 30. To date, SAF and Mr. Gottlieb do not know the precise number or terms of
6 CIDs that CPD has issued to third parties. When pressed, CPD has bizarrely claimed that it
7 obtained gag orders against these people and organizations for *SAF’s benefit*, asserting that
8 they had prohibited them from discussing the CIDs in order to protect SAF’s reputation. This
9 explanation is bogus and CPD knows it. The CIDs and gag orders have themselves, as
10 designed, severely damaged plaintiffs’ reputations and ability to work with the third-party
11 CID recipients, who could easily decide working with plaintiffs is not worth the legal bills
12 and potential liability.

13 31. On May 5, 2022, CPD began serving CIDs directly upon Mr. Gottlieb, SAF,
14 and other entities associated with Mr. Gottlieb. The CIDs contained dozens of interrogatories
15 and requests for extensive document production, as well as multiple demands that Mr.
16 Gottlieb and others sit for depositions. In some instances, the CIDs explicitly demanded
17 information regarding events that occurred more than four decades prior that could have been
18 retrieved from the public records of lawsuits the CPD already knew about. Along with the
19 same Consumer Protection and Charitable Solicitations Acts that CPD cited during its
20 harassing investigation of Value Village, the CIDs strangely claimed that CPD was looking
21 into possible violations of the Washington Telecommunications Act and Telemarketing Sales
22 Rule. Although the investigation was carried out at Mr. Ferguson’s instruction and in
23 accordance with his policies, the demands were signed by Mr. Studor on behalf of Mr.
24 Ferguson and specified that all responses were to be delivered to Mr. Studor.

1 32. Not understanding the point of the investigation and having nothing to hide,
2 Mr. Gottlieb and SAF fully cooperated and complied. They retained counsel to assist them
3 with responding to the demands, and over the last year they have expended over \$100,000 in
4 legal fees and hundreds of man hours drafting and providing dozens of detailed written
5 answers and reviewing and producing tens of thousands of pages of financial records,
6 personal correspondence, and CPA private information.

7 33. Throughout this process, counsel for Mr. Gottlieb and SAF have repeatedly
8 asked for an explanation of what unlawful activity they are suspected of having committed.
9 CPD, through Mr. Studor, has offered only nonspecific and illogical answers. It has made
10 vague references to unlawful auto-dialing, but neither SAF nor any of the other entities
11 associated with Mr. Gottlieb have ever used automated dialing technology of any kind. At one
12 point, CPD appeared to instead be pursuing a theory that Mr. Gottlieb unjustly enriched
13 himself by leasing his office building in Bellevue to SAF or in connection with the early
14 1980s purchase and sale of a building and land in Bellevue. But these same claims were
15 considered and rejected by the King County Superior decades ago. And even a cursory look at
16 prevailing lease rates in Bellevue is enough to demonstrate that SAF is dramatically
17 *underpaying* for its space. CPD then appeared to pursue a similar theory regarding the support
18 services that Mr. Gottlieb's company Merrill Associates provides to SAF. But Merrill
19 Associates charges rates that were set and approved by the King County Superior Court
20 decades ago. Moreover, all transactions between SAF and any companies in which Mr.
21 Gottlieb has an interest are approved by SAF's board, with Mr. Gottlieb abstaining, disclosed
22 in its public tax filings, audited by CPAs with the audits posted on SAF's website (SAF.org),
23 and consistently audited by the IRS. Pivoting from its baseless claims of self-dealing, CPD
24 next suggested that SAF had misled donors as to how it would use their donations (an
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1 accusation quite similar to the one against Value Village that the Washington Supreme Court
2 found was totally baseless). But like the other flimsy excuses, these allegations are completely
3 unfounded—SAF’s messaging is explicit and accurate as to how it will use donations, and
4 CPD has not identified a single misleading statement Mr. Gottlieb or any plaintiff
5 organization has made.

6 34. At a loss regarding CPD’s motives, counsel for Mr. Gottlieb and SAF’s
7 attorneys submitted a Public Records Act request to the Attorney General’s Office on August
8 8, 2022, seeking all documents reflecting the origins and nature of the investigation and any
9 allegations that have been made against them.

10 35. The Attorney General’s Office still has not fully complied with that request
11 and still, over a year after the request was submitted, has not even given SAF a reasonable
12 estimate of the time it will require to fully respond.

13 36. On August 15, 2022, the Attorney General’s Office said it would provide “an
14 installment” of responsive documents by September 15, 2022. On September 6, 2022, it said
15 it anticipated the process would be complete by September 30, 2022. But on October 26,
16 2022, the Attorney General’s Office said the process would take until November 18, 2022.
17 That statement was misleading as well. On December 27, 2022, the Attorney General’s Office
18 said another batch of documents would arrive on January 20, 2023. On March 2, 2023, more
19 documents arrived, along with a note that even more would be supplied by March 24, 2023.
20 When asked if that would be the last batch of documents, the Attorney General’s Office
21 responded that it did not know, gave no reasonable estimate of the time it required to finally
22 fully comply with SAF’s request, and gave no explanation for the delays to that point. As
23 recently as September 7, 2023, the State produced another batch of records, saying that yet
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1 another batch would be arriving later in the month. Still there is no estimate from the State
2 about when it will finally and fully comply with the Public Records Act.

3 37. Over the months in which the Attorney General’s Office has flouted the Public
4 Records Act with its foot-dragging, it has slowly produced documents containing nothing
5 more than pleadings from litigation with SAF and a small handful of run-of-the-mill
6 complaints of the type every charitable organization receives, all of which were promptly
7 handled and none of which suggested illegal activity. The one unusual complaint in the bunch
8 came from an eager donor who protested that SAF was not sending solicitations frequently
9 enough.

10 38. On January 12, 2023, Mr. Gottlieb sat for the first of several days of
11 depositions CPD has demanded from him. Even hours of questioning did not illuminate the
12 purpose or origin of CPD’s dissection of Mr. Gottlieb’s life and SAF’s actions. The questions
13 were cast in so many directions, CPD appeared to have abandoned its claim that SAF had
14 misled donors, instead interrogating Mr. Gottlieb regarding topics like legal disputes that were
15 conclusively resolved decades ago and an email between two third parties from over twenty-
16 three years ago in which a political consultant mentions having had a conversation with Mr.
17 Gottlieb. As the meandering questioning continued, it became increasingly clear that CPD had
18 never had any reasonable basis for suspecting SAF or Mr. Gottlieb of violating the statutes
19 listed in the CIDs or any other laws.

20 39. Though the deposition did not reveal any illegal activity on the part of Mr.
21 Gottlieb, it did confirm that *Mr. Ferguson’s office* had violated Washington Law by silently
22 withholding documents it should have produced in response to counsel’s public records
23 request. On August 8, 2022, SAF sent a Public Records Act request for “All non-privileged
24 documents related to [CPD’s] ongoing investigation of [SAF],” “All other CPD documents
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1 mentioning [SAF, CCRKBA, CDFE, LPP, MMM, MA, SBA, and Alan Gottlieb],” and “All
2 other documents within the Office of the Attorney General outside of [CPD] mentioning one
3 of the above-listed entities.” Despite these clear requests, Mr. Studor confronted Mr. Gottlieb
4 at his deposition with the December 16, 1999, email from the political consultant mentioned
5 above. CPD considers this document non-privileged as it made it an exhibit to a deposition.
6 CPD also considers it related to the investigation as it questioned Mr. Gottlieb about it. And
7 the document plainly mentions Mr. Gottlieb. Despite the Attorney General’s Office being
8 self-evidently aware of the document’s existence and responsiveness to the Public Records
9 request, the Office had withheld it without even claiming any legal basis for doing so. The
10 Office could not have assumed Mr. Gottlieb already had the email, as it was not written by or
11 addressed to him.

12 40. Frustrated by the realization that the multiple year investigation was truly
13 baseless and motivated by sheer political animus, counsel for Mr. Gottlieb wrote to CPD, via
14 Mr. Studor, on January 23, 2023, demanding the investigation cease and that CPD disclose all
15 CIDs it had served on third parties and reimburse Mr. Gottlieb and SAF for their legal fees.
16 Mr. Studor responded on March 2 in a letter claiming that, actually, CPDs investigation had
17 already “uncovered significant evidence” that SAF and Mr. Gottlieb “ha[d] violated the law.”
18 For the first time in the over two years of investigations, Mr. Studor presented *an entirely new*
19 *legal* theory—that SAF or other CID recipients (the letter did not specify which) had
20 “violated the law for many years by soliciting charitable contributions and engaging in
21 commercial fundraising without registering with the Secretary of State.” Mr. Studor further
22 contended that “[e]ven those that registered properly failed to include many of the disclosures
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1 required by law.”¹⁶ Mr. Studor claimed that, rather than political animus, “[t]he AGO’s
2 purpose in our investigation of your clients is to ensure compliance with state law – nothing
3 more.”

4 41. SAF, interested as ever in fully complying with the law, promptly audited the
5 registration status of all of the Gottlieb-related entities that had received CIDs. On March 7,
6 SAF wrote back to Mr. Studor pointing out that each of the entities at issue was either exempt
7 from registering with the Secretary of State under applicable statutes or *had* in fact registered
8 and made all required disclosures. SAF’s counsel pleaded with Mr. Studor for an explanation:
9 “If your only purpose is to ensure compliance with the law, then tell me which one of my
10 clients is violating the law, which law they are violating, and what they are doing wrong, so
11 my clients can address the alleged non-compliance. My clients have every intention of
12 complying with the law, as evidenced by the efforts they have undertaken to cater to your
13 office’s demands in this investigation.” Mr. Studor never provided clarification of which
14 entities he believed had not properly registered or what other unlawful activity he believed
15 Mr. Gottlieb and SAF had committed. Though Mr. Studor claimed some unidentified entities
16 had been violating the law for many years, he declined to provide any instructions on how
17 they could bring their conduct into compliance with the law. Instead, he just pressed to set
18 more deposition dates.

19 42. The Attorney General’s Office was unable to provide any clarification in
20 response to SAF’s inquiries because—like all the other flimsy explanations CPD has
21 proffered—the claims regarding registration are pretextual and knowingly false. CPD has
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23 ¹⁶ As noted, CPD made very similar allegations against Value Village during its unlawful
24 investigation, accusing it of unlawfully failing to register despite the Secretary of State telling the
25 organization *three separate times* that registration was not required. *TVI, Inc.*, 524 P.3d at 627.

1 conducted a destructive multi-year investigation of Mr. Gottlieb and SAF not because it has
2 reason to suspect any wrongdoing, but because Mr. Ferguson and his subordinates disagree
3 with their political beliefs. Knowing there is no viable legal claim to bring against SAF or
4 Mr. Gottlieb, an investigation is the only way they can use their power to punish SAF and Mr.
5 Gottlieb and deplete their resources. Mr. Ferguson, Mr. Studor, and CPD wish to punish SAF,
6 Mr. Gottlieb, and related entities, both for their activism generally and for their having the
7 temerity to publicly challenge Mr. Ferguson. They hope to find some evidence—any evidence
8 at all—of unlawful activity that it can use as justification for going after the Attorney
9 General’s political enemies. Barring that, they just hope to chill Plaintiffs’ First Amendment
10 activity by driving up the cost of disagreeing politically with the Attorney General, making
11 their lives miserable, and wasting the time and money that could otherwise go towards their
12 mission. And they hope that all of these actions will benefit Mr. Ferguson politically,
13 including in his new run for governor, by reinforcing perceptions of him as a champion
14 against conservative entities and causes that are unpopular with his supporters.

15 43. The implications of this type of campaign of harassment transcend partisan
16 politics. In a free and democratic society, it is unacceptable for officials to conspire to use the
17 powers of state to silence their critics. Indeed, such conspiracy is a federal crime in itself. *See*
18 18 U.S.C. § 241. For the protection of democracy and constitutional liberties, Mr. Ferguson’s
19 office must be ordered to cease its harassment and held accountable for its unconstitutional
20 actions.

21 **C. Procedural History**

22 44. After CPD refused to respond to SAF and Mr. Gottlieb’s repeated requests for
23 clarification and with all options for amicable resolution exhausted, SAF and Mr. Gottlieb
24 finally on May 3, 2023, filed suit against Mr. Ferguson, Mr. Studor, and the Attorney
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1 General's Office (collectively, "State Defendants") in the United States District Court for the
2 Western District of Washington. Their complaint raised the same causes of actions asserted
3 herein, including that CPD's discriminatory and retaliatory harassment violated the First and
4 Fourth Amendments to the United States Constitution.

5 45. On June 12, 2023, the State Defendants filed a motion to dismiss that primarily
6 challenged federal jurisdiction. These objections to federal jurisdiction were largely
7 baseless¹⁷ and in many instances mischaracterized SAF and Mr. Gottlieb's claims.¹⁸
8 Nevertheless, SAF and Mr. Gottlieb decided that litigating ancillary issues of federal
9 jurisdiction was a waste of time and resources and a distraction from the underlying merits of
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13 ¹⁷ For example, State Defendants argued that SAF and Mr. Gottlieb lacked standing because
14 they had not alleged that their speech had actually been chilled by the sham investigation and the CIDs
15 were not self-executing. But it is well established that no speech actually needs to be chilled in order
16 for a plaintiff to bring a First Amendment claim based on a discriminatory, retaliatory investigation.
17 See *White v. Lee*, 227 F.3d 1214, 1241 (9th Cir. 2000); *Puckett v. City of Glen Cove*, 631 F. Supp. 2d
18 226, 239 (E.D.N.Y. 2009) ("Chilling is required to be alleged only in cases where a plaintiff states no
19 harm independent of the chilling of speech."). SAF and Mr. Gottlieb have specifically alleged
20 reputational and emotional damages that were fully realized as a result of CPD's serving the CIDs,
21 regardless of whether those CIDs are ultimately enforced by a court. Moreover, by the time it became
22 clear that CPD's investigation of SAF and Mr. Gottlieb was not based on any suspicion of unlawful
23 conduct but was instead initiated and maintained based solely on political animus, the window for
24 petitioning to set the CID aside under RCW 19.86.110(8) had long since passed, making State
25 Defendants' petitioning a court for enforcement a mere formality. State Defendants also argued that
the federal court should refrain from disrupting state proceedings under the *Younger* abstention
doctrine. But even assuming *Younger* abstention could be applied to an investigation in which no
formal state proceedings have been initiated whatsoever, the doctrine specifically *does not* apply when
state proceedings are brought in bad faith for the purpose of harassment, see *Middlesex County Ethics
Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 435 (1982), which is precisely what SAF and Mr.
Gottlieb alleged.

¹⁸ State Defendants repeatedly claimed SAF and Mr. Gottlieb were seeking to enjoin a
legitimate investigation because they believed it was being carried out in a biased manner. This is
inaccurate. As here, SAF and Mr. Gottlieb's complaint alleged that there *was no* legitimate
investigation and State Defendants' harassment was initiated and maintained based on political animus
without any suspicion of unlawful activity.

1 their suit. On July 10, 2023, they voluntarily dismissed their federal suit without prejudice so
2 their claims could be refiled in state court. *See* Fed. R. Civ. P. 41(a)(1)(A)(i), (a)(1)(B).

3 46. The same day, SAF and Mr. Gottlieb filed a completed General Liability
4 Claim Form #SF 210 with the Washington Office of Risk Management pursuant to RCW
5 4.92.100(1). The State has never responded to the claim in any way, despite the passage of
6 more than 60 days.

7 V. CAUSES OF ACTION

8 Count I

9 Viewpoint Discrimination

10 *42 U.S.C. § 1983, First and Fourteenth Amendments to the U.S. Constitution*
(Robert Ferguson and Joshua Studor, individually w/ respect to monetary damages and in their official capacities
11 w/ respect to injunctive relief)

12 47. The foregoing paragraphs are incorporated herein as if set forth in full.

13 48. The First and Fourteenth Amendments to the United States Constitution
14 prevent state officials from discriminating against individuals or organizations based on their
15 speech or beliefs. *Arizona Students' Ass'n v. Arizona Bd. of Regents*, 824 F.3d 858, 868 (9th
16 Cir. 2016). These protections have their “broadest” application in the context of “political
17 expression,” as the First Amendment is specifically designed “to assure unfettered
18 interchange of ideas for the bringing about of political and social changes desired by the
19 people.” *Id.* (quoting *Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (per curiam)). Thus, “[a]
20 person’s First Amendment free speech right is at its highest when that person engages in ‘core
21 political speech,’ which includes *issue-based advocacy*” like SAF’s opposition to restrictions
22 on the right to bear arms. *Id.* (emphasis added) (quoting *McIntyre v. Ohio Elections Comm’n*,
514 U.S. 334, 347 (1995)).

23 49. It is well established that the First and Fourteenth Amendments prohibit
24 officials from targeting individuals for enforcement actions discriminatorily based on the
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1 political beliefs of the target. *See, e.g., Hoyer v. City of Oakland*, 653 F.3d 835, 855 (9th Cir.
2 2011) (citing *Yick Wo v. Hopkins*, 118 U.S. 356 (1886)); *Menotti v. City of Seattle*, 409 F.3d
3 1113, 1147 (9th Cir.2005); *Foti v. City of Menlo Park*, 146 F.3d 629, 635 (9th Cir. 1998). An
4 administrative investigation into supposed statutory violations also violates an individual or
5 group’s First and Fourteenth Amendment rights when it is motivated by animus to their
6 Constitutionally protected beliefs, even if the officials “ultimately decide[] not to pursue
7 either criminal or civil sanctions against them.” *White*, 227 F.3d at 1228. “Informal
8 measures, such as ‘the threat of invoking legal sanctions and other means of coercion,
9 persuasion, and intimidation’ can violate the First Amendment also.” *Id.* (quoting *Bantam*
10 *Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963)).

11 50. 42 U.S.C. § 1983 allows the plaintiffs to bring a private cause of action for
12 violation of their rights under the First and Fourteenth Amendments.

13 51. Defendant’s sham investigation of SAF and Mr. Gottlieb is substantially
14 motivated by animus toward their political beliefs. They have not subjected other similarly
15 situated individuals and organizations—that is, individuals and organizations involved in
16 other types of political advocacy—to the type of suspicionless, invasive, and disruptive
17 investigation detailed above. For instance, CPD has taken no known action, investigatory or
18 otherwise, against the Alliance for Gun Responsibility, Grandmothers Against Gun Violence,
19 Ceasefire, or any other anti-gun group that has given Mr. Ferguson an award or espoused the
20 same view of the Second Amendment as Mr. Ferguson. The investigation of the plaintiffs
21 constitutes unconstitutional viewpoint discrimination in violation of the First and Fourteenth
22 Amendments.¹⁹

24 ¹⁹ In their federal motion to dismiss, State Defendants argued SAF and Mr. Gottlieb must
25 allege their speech was actually chilled by State Defendants’ actions to succeed on the merits of a

Count II
Unconstitutional Retaliation

42 U.S.C. § 1983, First and Fourteenth Amendments to the U.S. Constitution
(Robert Ferguson and Joshua Studor, individually w/ respect to monetary damages and in their official capacities
w/ respect to injunctive relief)

52. The foregoing paragraphs are incorporated herein as if set forth in full.

53. The federal First Amendment prohibits public officials from using their authority to retaliate against, obstruct, or chill citizen’s expressive rights. *Arizona Students’ Ass’n*, 924 F.3d at 867 (citing *Gibson v. United States*, 781 F.2d 1334, 1338 (9th Cir. 1986)).

54. Similarly, “the right of access to courts for redress of wrongs is an aspect of the First Amendment right to petition the government.” *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 896–897 (1984). The First Amendment therefore prohibits state officials from retaliating against an individual or group for their political advocacy, including their filing of lawsuits challenging laws or official policy. *CarePartners, LLC v. Lashway*, 545 F.3d 867, 877 (9th Cir. 2008).

55. A claim for unconstitutional retaliation exists where a state official takes an adverse action against a party that is substantially motivated by the party’s protected conduct. *Arizona Students’ Ass’n*, 924 F.3d at 867 (citing *O’Brien v. Welty*, 818 F.3d 920, 933 (9th Cir. 2016)). An adverse action is any action that would chill a person of ordinary firmness from exercising their constitutional rights. *Id.* As with a viewpoint discrimination claim, an administrative investigation can constitute unconstitutional retaliation in violation of an individual or group’s First and Fourteenth Amendment rights if it is motivated by animus to their Constitutionally protected expression, even if the officials “ultimately decide[] not to pursue either criminal or civil sanctions against them.” *White*, 227 F.3d at 1228. Again,

viewpoint discrimination claim. That is flatly untrue; demonstrating an enforcement decision based on the content of protected speech is sufficient. *See Hoye*, 653 F.3d at 854; *infra* ¶ 58.

1 “[i]nformal measures, such as ‘the threat of invoking legal sanctions and other means of
2 coercion, persuasion, and intimidation’ can violate the First Amendment also.” *Id.* (quoting
3 *Bantam Books*, 372 U.S. at 67.

4 56. 42 U.S.C. § 1983 allows the plaintiffs to bring a private cause of action for
5 violation of their rights under the First and Fourteenth Amendments.

6 57. A “plaintiff is not required to demonstrate that its speech was actually
7 suppressed or inhibited” to prevail on a retaliation claim; “a plaintiff need only show that the
8 defendant ‘intended to interfere’ with the plaintiff’s First Amendment rights and that it
9 suffered some injury as a result.” *Id.* (quoting *Mendocino Env’tl Ctr. v. Mendocino County*,
10 192 F.3d 1283, 1300 (9th Cir. 1999)); *see also Bart v. Telford*, 677 F.2d 622, 625 (7th Cir.
11 1982) (Posner, J.) (“The effect on freedom of speech may be small, but since there is no
12 justification for harassing people for exercising their constitutional rights it need not be great
13 in order to be actionable.”).

14 58. The investigation of SAF is plainly an adverse action, both when it is
15 considered in its entirety and with respect to the individual actions Defendants have taken
16 toward Mr. Gottlieb, SAF, and the other CID recipients. Mr. Gottlieb and SAF have been
17 forced to expend hundreds of man hours and tens of thousands of dollars in legal fees
18 responding to CPD’s CIDs. Moreover, CPD’s investigation has placed considerable stress on
19 Mr. Gottlieb’s health as well as his personal life and professional life, and it has damaged the
20 plaintiffs’ reputations by suggesting to third-party CID recipients that they have violated the
21 law. Vendors who have received CIDs may cease to do business with plaintiffs, believing
22 CPD’s false intimation that plaintiffs act illegally, or simply not wishing to deal with the
23 hassle and legal fees of complying with current and future CIDs. Any person of ordinary
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1 firmness in the position of any of the Plaintiffs would be discouraged from continuing to
2 engage in their customary First Amendment Activity by the CIDs.

3 59. The CPD's adverse actions against Plaintiffs are substantially motivated by
4 Plaintiffs' protected conduct. There is no evidence of any legitimate reason for the
5 investigation to have ever even begun. There was no pattern of complaints from the public.
6 There was nothing to bring SAF to the CPD's attention other than its political speech and
7 litigation activities. And the few flimsy justifications Defendants have offered for their
8 sweeping incursion are pretextual. Defendants' responding to disfavored political speech and
9 other constitutionally protected activities by subjecting plaintiffs to an invasive, expensive,
10 and unfocused investigation constitutes unconstitutional retaliation.

11 **Count III**
12 **Unreasonable Search**

13 *42 U.S.C. § 1983, Fourth and Fourteenth Amendments to the U.S. Constitution*
(Robert Ferguson and Joshua Studor, individually w/ respect to monetary damages and in their official capacities
w/ respect to injunctive relief)

14 60. The foregoing paragraphs are incorporated herein as if set forth in full.

15 61. A CID or other administrative subpoena is an unreasonable search in violation
16 of the Fourth Amendment when it seeks private information that is not reasonably relevant to
17 a valid investigation. *See State v. Miles*, 160 Wn. 2d 236, 254, 156 P.3d 864, 873 (2007)
18 (citing *Steele v. State ex rel. Gorton*, 85 Wn.2d 585, 594, 537 P.2d 782, 788 (1975)). A higher
19 standard of suspicion and relevance is required when such subpoenas are directed at
20 individuals' private information rather than the books of corporations, and the standard is
21 higher still when those individuals are family members or acquaintances not directly involved
22 in the corporate target of a valid investigation. *F.D.I.C. v. Garner*, 126 F.3d 1138, 1143 (9th
23 Cir. 1997) (citing *In re McVane*, 44 F.3d 1127 (2d Cir.1995)).

1 62. Further, a CID or administrative subpoena violates the Fourth Amendment
2 when the issuing agency has exceeded its statutory authority in issuing it. *United States v.*
3 *Morton Salt Co.*, 338 U.S. 632, 652 (1950). Washington law authorizes the Attorney General
4 to issue a CID only in furtherance of an investigation based on suspicion of specific types of
5 unlawful conduct. *See* RCW 19.86.110(1) (authorizing a CID only when the Attorney
6 General believes the sought information is relevant to an investigation of a possible violation
7 of specific enumerated statutes); RCW 19.86.110(2)(a) (requiring the CID to list the statute
8 that the Attorney General believes may have been violated). A CID issued without any cause
9 to believe a violation of any of the enumerated statutes has taken place necessarily exceeds
10 the Attorney General’s statutory authority to issue CIDs, and it thus also violates the Fourth
11 Amendment.

12 63. 42 U.S.C. § 1983 allows the plaintiffs to bring a private cause of action for
13 violation of their rights under the Fourth and Fourteenth Amendments.

14 64. Because Defendants’ investigation is purely retaliatory and not motivated by
15 any reasonable suspicion of wrongdoing, there is no valid investigation to which the
16 information sought by their CIDs could be relevant. It is an aimless fishing excursion,
17 conducted without a clear objective other than harassment and finding something—anything
18 at all—to justify further legal action against Mr. Gottlieb, SAF, and related parties. And
19 because the CIDs were not issued in connection with a valid investigation of possible
20 violations of the statutes enumerated in RCW 19.86.110(1), they exceed State Defendants’
21 statutory authority to issue such demands. These actions thus constitute unreasonable
22 searches in violation of the Fourth Amendment.

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Count IV
Abuse of Process

Washington Common Law Tort

(Robert Ferguson and Joshua Studor, individually w/ respect to monetary damages and in their official capacities w/ respect to injunctive relief, and the Washington Attorney General's Office)

65. The foregoing paragraphs are incorporated herein as if set forth in full.

66. Washington law also recognizes the tort of abuse of process, which is committed when "an ulterior purpose to accomplish an object not within the proper scope of the process" that leads a party to commit "an act not proper in the regular prosecution of proceedings." *Bellevue Farm Owners Ass'n v. Stevens*, 198 Wash. App. 464, 477, 394 P.3d 1018, 1024 (2017) (citing Restatement (Second) of Torts § 682).

67. Washington has waived sovereign immunity to tort actions, and state officials are liable for tortious conduct to the same extent as private individuals. RCW 4.92.090. It has also made public agencies liable for the tortious conduct of their officials. RCW 4.24.470.

68. Defendants' investigation of Mr. Gottlieb, SAF, and the other CID recipients is motivated by the ulterior purpose of harassing them for their political beliefs and generating dirt on Mr. Ferguson's political opponents. Mr. Gottlieb is a vulnerable target. A 76-year old man with a history of cardiac arrest. CPD's treatment of Mr. Gottlieb is designed to destroy his health, make his and his family's lives miserable, and to chill the activities of SAF and the other entities or force them out of business as punishment for their politics and opposition to Mr. Ferguson and his agenda. Defendants likewise hope to find reason for a public prosecution that will allow them to garner favor from their supporters, who share their animus toward Mr. Gottlieb, SAF, and the other CID recipients. These purposes are not properly within the scope of the statute authorizing CIDs. Defendants' misuse of CIDs thus constitutes tortious abuse of process.

Count V
Public Records Act Violation
RCW 42.56.550

(The Washington Attorney General's Office)

69. The foregoing paragraphs are incorporated herein as if set forth in full.

70. “The PRA mandates broad public disclosure.” *Sargent v. Seattle Police Dep’t*, 179 Wash.2d 376, 385, 314 P.3d 1093 (2013) (citing RCW 42.56.030); *Hearst Corp. v. Hoppe*, 90 Wash.2d 123, 127, 580 P.2d 246 (1978). The law’s policy statement proclaims that “[t]he people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” RCW 42.56.030. The PRA disclosure requirement is thus “liberally construed and its exemptions narrowly construed to promote this public policy and to assure that the public interest will be fully protected. In the event of conflict between the provisions of this chapter and any other act, the provisions of this chapter shall govern.” *Id.*

71. State and local agencies are required to disclose their records upon request, unless the record falls within an exception. *Gendler v. Batiste*, 174 Wash.2d 244, 251, 274 P.3d 346 (2012) (citing RCW 42.56.070(1)). When a record falls within an exception to the PRA, the agency must, if possible, provide a redacted document that specifies which exceptions purportedly authorize each redaction. *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 433, 327 P.3d 600, 606 (2013), as amended on denial of reh’g (Jan. 10, 2014). When a document cannot be effectively redacted to render it non-exempt, the agency must provide notice that it is withholding the document that includes an explanation of which PRA exemption it believes entitles it to withhold the record and why it applies. *Id.* at 432. “The Public Records Act clearly and emphatically prohibits silent withholding by agencies of

1 records relevant to a public records request.” *Progressive Animal Welfare Soc. v. Univ. of*
2 *Washington*, 125 Wn.2d 243, 270, 884 P.2d 592, 607 (1994).

3 72. As detailed above, counsel for SAF and Mr. Gottlieb made a PRA request to
4 Mr. Ferguson’s office on August 8, 2022, asking that the agency produce various records
5 related to SAF and related entities and CPD’s investigation thereof. Despite the passage of
6 over a year, the State is still withholding and delaying productions and has not even said when
7 its document production will be complete.

8 73. On January 12, 2023, during the deposition of Mr. Gottlieb pursuant to one of
9 the CIDs CPD issued to him, Mr. Studor utilized a 1999 email it had pulled from its files as
10 an exhibit. This document was plainly responsive to several parts of the PRA request for. Yet
11 Mr. Ferguson’s office did not include this document in any of its prior productions or in any
12 production since. Nor has the agency ever stated that it was withholding this document
13 pursuant to a PRA exemption.

14 74. Both the nondisclosure of this document and its use during Mr. Gottlieb’s
15 deposition are independent violations of the PRA. *See* RCW 42.56.070(1) (requiring
16 disclosure of public records); RCW 42.56.080(6) (“A public record may be relied on, used, or
17 cited as precedent by an agency against a party other than an agency and it may be invoked by
18 the agency for any other purpose only if: (a) It has been indexed in an index available to the
19 public; or (b) Parties affected have timely notice (actual or constructive) of the terms
20 thereof.”). And, to the extent Mr. Ferguson’s Office declined to disclose this record because it
21 was requested by counsel for Mr. Gottlieb, SAF, and related entities, this, too, is a PRA
22 violation. *See* RCW 42.56.080(2) (“Agencies shall not distinguish among persons requesting
23 records”). The existence of this wrongfully withheld document also suggests more may exist,
24 constituting yet more PRA violations.

1 75. Because the PRA request specifically asked for documents related to CPD's
2 investigation of SAF, it strains credulity to believe the personnel responding to it did not
3 consult with Mr. Studor and his team regarding the documents they intended to use in their
4 investigation, and their failure to do so would at minimum constitute a violation of the
5 office's PRA duty to perform a reasonable search for responsive documents. *See*
6 *Neighborhood All. of Spokane Cnty. v. Spokane Cnty.*, 172 Wn.2d 702, 720, 261 P.3d 119,
7 128 (2011). The inescapable conclusion is that Mr. Ferguson's office willfully refused to
8 comply with its PRA obligations. This willful violation justifies imposing the maximum
9 penalties authorized under the statute. *Zink v. City of Mesa*, 162 Wn. App. 688, 712, 256 P.3d
10 384, 397 (2011).

11 76. The Attorney General's Office has violated RCW 42.56.520 by filing to
12 provide its response to SAF's request for public records promptly and by failing, within five
13 business days of receiving SAF's request to respond by (a) providing the responsive records,
14 (b) provide a link to the records, (c) providing a reasonable estimate of the time the office will
15 require to respond to the request, (d) asking for clarification of the request and providing a
16 reasonable estimate of the time required to respond, or (e) giving SAF specific reasons why it
17 is denying SAF's request.

18 **I. PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter
20 judgment in their favor and against Defendants, as follows:

- 21 a. Declare that Defendant's politically motivated harassment,
22 including its serving CIDs on Plaintiffs and related parties, violates
23 the First, Fourth, and Fourteenth Amendments to the U.S.
24 Constitution.
- 24 b. Enjoin Defendants, their officers, agents, servants, employees, and
25 all persons in active concert or participation with them from serving

1 or enforcing further CIDs for politically discriminatory or
2 retaliatory purposes and/or without reasonable suspicion of illegal
activity;

- 3 c. Order Defendants, their officers, agents, servants, employees, and
4 all persons in active concert or participation with them to return or
5 destroy all nonpublic documents or other digital or tangible
6 memorializations of private information that are in their possession
as a result of their serving and enforcing CIDs on Plaintiffs and
7 related parties for politically discriminatory or retaliatory purposes
and/or without reasonable suspicion of illegal activity;
- 8 d. Grant Plaintiffs any and all damages to which they are entitled,
including but not limited to actual, compensatory, punitive and/or
9 nominal damages;
- 10 e. Pursuant to 42 U.S.C. § 1983 and 1988, RCW 19.86, and any other
11 applicable law, award the Plaintiffs their costs, attorneys' fees, and
expenses to the extent permitted;
- 12 f. Award Plaintiffs their costs, including reasonable attorney fees,
13 incurred in connection with this action, as well as \$100 dollars per
14 day that they were denied access to the public records they have
requested, under RCW 49.56.550; and
- 15 g. Grant any and all other equitable and/or legal remedies as this Court
16 may see fit.

17 DATED this 18th day of September, 2023.

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