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14 **UNITED STATES DISTRICT COURT**
 15 **NORTHERN DISTRICT OF CALIFORNIA**
 16 **SAN FRANCISCO DIVISION**

17 FIRST UNITARIAN CHURCH OF LOS
 18 ANGELES, *et al.*,
 19 Plaintiffs,
 20 v.
 21 NATIONAL SECURITY AGENCY, *et al.*,
 22 Defendants.

Case No: 3:13-cv-03287 JSW

**DECLARATION OF BERIN SZOKA
 ON BEHALF OF TECHFREEDOM
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR PARTIAL SUMMARY
 JUDGMENT**

Date: February 7, 2014
 Time: 9:00 A.M.
 Hon. Jeffrey S. White
 Courtroom 11 - 19th Floor

1 I, BERIN SZOKA, hereby declare:

2 1. I am the President of TechFreedom. The facts contained in the following affidavit are
3 known to me of my own personal knowledge and, if called upon to testify, I could and would
4 competently do so.

5 2. Our organization is a non-profit¹ think tank based in Washington, D.C. Our mission is
6 promoting technology that improves the human condition and expands individual capacity to choose
7 by educating the public, policymakers, and thought leaders about the kinds of public policies that
8 enable technology to flourish. TechFreedom seeks to advance public policy that makes
9 experimentation, entrepreneurship, and investment possible, and thus unleashes the ultimate
10 resource: human ingenuity.

11 3. All of TechFreedom's employees use Verizon for business and personal purposes.
12 The compelled disclosure of our phone records to the government will decrease our organization's
13 capacity to effectively communicate with policymakers, journalists, thought leaders, civil society
14 allies, and our donors.

15 4. TechFreedom's ability to effectively advocate for our positions and influence
16 lawmakers, policymakers, journalists and thought leaders, as well as to raise funds from donors,
17 often hinges on our ability to communicate, and develop, our policy positions in confidence.

18 5. Since the disclosure of the Associational Tracking Program, we have lost the ability
19 to assure policymakers, journalists, thought leaders, civil society allies, and our donors, that the fact
20 of their communications to and with us will be kept confidential.

21 6. Indeed, in many circumstances, disclosure of the fact and timing of a particular
22 communication is more important and revealing than the content of the communication.

23 7. This is particularly so in the case of TechFreedom's fundraising. Private
24 communication is often essential for fundraising purposes: Some donors are less willing to engage
25

26 ¹ We have applied for federal tax-exempt status under Section 501(c)(3); while we have not yet
27 received that status, we are operating according to the requirements of federal tax law.

1 with the organization and its employees if they know the fact of their communications will not be
2 confidential.

3 8. Moreover, the timing of our communication with other parties, such as donors, might
4 imply a chain of causation between donations, positions we take, and changes to the intellectual
5 landscape that result from our advocacy – even where such causation does not actually exist. Such
6 inaccurate perceptions could substantially damage our reputation for independence or even
7 potentially jeopardize our non-profit status. Even if we were vindicated, the mere fact of an
8 investigation or suggestion of impropriety could damage our reputation, limit our effectiveness and
9 harm our ability to raise support for our work.

10 9. This fear is neither speculative nor abstract. Indeed, my former think tank, The
11 Progress & Freedom Foundation (PFF), was the subject of a three year investigation by the Internal
12 Revenue Service into whether PFF had, by funding a college course (Renewing American
13 Civilization”) taught by then-House-Speaker Newt Gingrich, violated its tax-exempt status by
14 engaging in electoral politics. The investigation ultimately concluded that the course and course
15 book "were educational in content," rather than electoral. While this finding vindicated PFF, the
16 investigation did considerable damage to PFF’s reputation, its relationship with Gingrich, and its
17 ability to raise money from individuals who sympathized with Gingrich’s futurist views. Combined
18 with speculation that the investigation was itself politically motivated, this experience further chilled
19 PFF’s ability to exercise its free speech rights within the confines of its tax-exempt status by causing
20 its future employees to be excessively cautious about engaging in speech that either might
21 conceivably raise legitimate questions of tax law or that might raise the ire of those in a position to
22 launch another such investigation.

23 10. The disclosure of TechFreedom’s communication records similarly harms our ability
24 to fully advocate and advance our positions with policymakers.

25 11. For example, if TechFreedom has taken a public position on a particular issue, and
26 policymakers are poised to vote on that issue, the content of our communication to policymakers and
27 their staffs can safely be inferred: our communications will likely be consistent with our

1 public position.

2 12. In this example, however, the *fact and timing* of our communication with a lawmaker
3 can be substantially more revealing. For example, if TechFreedom communicates with a
4 policymaker shortly before that policymaker shifts his or her public position to align more closely
5 with TechFreedom's position, it can safely be assumed that TechFreedom's communication had
6 some influence over that decision.

7 13. Because of the acrimonious and partisan nature of Washington politics, the
8 Associational Tracking Program will necessarily cause policymakers to be more inhibited with their
9 communications with TechFreedom. For some policymakers, a change in their policy positions
10 attributable to TechFreedom's advocacy may imply, accurately or not, an association or relationship
11 that the policymaker might otherwise be unwilling to publicly acknowledge.

12 14. This inhibition, in turn, hinders TechFreedom's ability to advocate effectively for its
13 ideas.

14 15. Similarly, our communications with journalists and foreign nationals is limited by the
15 risk of disclosure. Knowing that the government will retain a record of all our communications, and
16 the inevitable possibility of disclosure, will reduce the likelihood of such individuals working with
17 TechFreedom on important Internet freedom issues, which are inherently trans-national and often
18 require collaboration with foreign civil society groups and policymakers.

19 16. Given the nature of our work, all the parties we deal with are exceptionally sensitive
20 to the risk of breaches of data collected by the government – be they inadvertent, the result of
21 malicious attacks on U.S. government servers, or intentional leaks or disclosures by politically
22 motivated individuals. Nor are the parties we deal with likely to accept official insistence that data
23 collected for one purpose by one agency will not be shared with other government agencies or with
24 policymakers. In short, the fact the government collects our call records in the first instance is
25 sufficient to inhibit parties from engaging with us without inhibition.

26 17. The compelled disclosure to the government of all TechFreedom's telephone
27 communications, and the associated risk that those communications may later be disclosed, is a

1 risk some policymakers, journalists, thought leaders, civil society allies, and donors are unwilling to
2 take.

3 18. As a result, the Associational Tracking Program has chilled TechFreedom’s ability to
4 effectively advocate for our positions and advance our organizational mission.

5 I declare under penalty of perjury under the laws of the United States of America that
6 the foregoing is true and correct. Executed on October ____, 2013 at _____, _____.
7 [City] [State]

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10 BERIN SZOKA
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5 I declare under penalty of perjury under the laws of the United States of America that
6 the foregoing is true and correct. Executed on October 29, 2013 at Washington, DC.
7 [City] [State]

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10 BERIN SZOKA

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