



U.S. Department of Justice

Tax Division

Special Litigation

Trial Attorney: Benjamin L. Tompkins
Attorney's Direct Line: (202) 514-5885
Facsimile Nos. (202) 514-4963 or 514-9868

Mailing Address:
P. O. Box 14198
Washington, DC 20044

Street address:
555 4th St., NW, Ste. 6222
Washington, DC 20001

BTompkin/NOM/FKSUBP
5-79-11512
CMN 2014100037

January 24, 2014

By FedEx and Electronic Mail

Cary Davidson
Reed & Davidson
3699 Wilshire Blvd.
Suite 1290
Los Angeles, CA 90010

Re: *The National Organization for Marriage v. United States of America*,
13-cv-1225-JCC/IDD (E.D. Va.)

Dear Mr. Davidson:

Enclosed please find a subpoena requesting the production of documents from Fred Karger, your client. Following up on my email from January 22, 2014 and our telephone conversations, we request that you accept service of this subpoena via FedEx on behalf of your client. The enclosed subpoena requests documents that are in Mr. Karger's possession, custody, or subject to his control concerning the topics outlined in the subpoena's attachment.

Although the subpoena requests that Mr. Karger produce the requested documents for inspection at the United States Attorney's Office in Los Angeles, California, he may comply with the subpoena by delivering copies of the requested documents to my street address via overnight mail or private delivery service, for receipt no later than February 18, 2014. If Mr. Karger chooses to appear in person at the United States Attorney's Office, please call me at (202) 514-5885 so that arrangements can be made for receipt of the documents.

Please return the enclosed acknowledgment of service no later than January 31, 2013.

If you have any questions or concerns regarding the enclosed subpoena and attachments, please contact me at (202) 514-5885.

Sincerely yours,



BENJAMIN L. TOMPKINS
Trial Attorney, Civil Trial Section
Southern Region

Encls.

cc: Counsel for Plaintiff
Counsel for the United States

UNITED STATES DISTRICT COURT
for the
Eastern District of Virginia

The National Organization For Marriage, Inc.,

Plaintiff

v.

The United States of America,

Defendant

Civil Action No. 13-1225-JCC-IDD

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: Fred Karger c/o Cary Davidson, Reed & Davidson, 3699 Wilshire Blvd., Suite 1290, Los Angeles, CA 90010

(Name of person to whom this subpoena is directed)

Production: YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached description of documents.

Place: United States Attorney's Office for the Central District of California, 312 North Spring Street, Suite 1200, Los Angeles, CA 90012
Date and Time: 02/18/2014 10:00 am

(You may also comply per the attached letter)

Inspection of Premises: YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:
Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached - Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 01/24/2014

CLERK OF COURT

OR

Handwritten signature of attorney

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) United States of America, who issues or requests this subpoena, are:

Christopher Belen, Trial Atty., US DOJ - Tax Division, PO Box 14198, Ben Franklin Station, Washington, D.C. 20044, Phone: 202-307-2089, Email: christopher.d.belen@usdoj.gov

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 13-1225-JCC-IDD

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) Objections. A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT

Definitions

A. As used in these requests, the term “documents” includes, but is not limited to, originals, copies and non-identical copies (whether by reason of handwritten notations thereon or otherwise) of tapes, files, inter-office memoranda, correspondence, notes, e-mails, instant messaging, text messaging or SMS, notations, letters, minutes, telegrams, financial statements, ledgers, checks, wage documents, studies, diaries, books, notebooks, desk calendars, intra-company communications, papers, handwritten notes, work papers, computer printouts or information, information stored on computer or disk, handbooks, affidavits, witness statements, and other materials and/or documentation.

B. “You,” “your,” or “yourself,” means Fred Karger and your agents, attorneys, consultants, representatives, and all other persons acting or purporting to act on your behalf.

C. The term “Complaint” means the Verified Complaint in *The National Organization For Marriage, Inc. v. United States of America, Internal Revenue Service*, 13-cv-1225-JCC/IDD, filed on October 3, 2013 in the United States District Court for the Eastern District of Virginia.

D. The term “communication” means the transmittal of information by any means, including, but not limited to, e-mails and other electronic or digital transmission of information.

E. The term “relating” or “relate” shall mean: pertaining, describing, referring, evidencing, reflecting, discussing, showing, supporting, contradicting, refuting, constituting, embodying, containing, concerning, identifying, or in any way logically or factually connected with the matter discussed.

F. The term “associated with NOM” includes, but is not limited to, full-time and part-time employees, volunteers, interns, independent contractors, agents, officers, directors, chairpersons and all other individuals or entities affiliated with National Organization of Marriage (“NOM”).

G. The terms “return” and “return information” have the same meaning as they have in 26 U.S.C. § 6103 and the cases interpreting those terms as used in § 6103.

H. The words “or” and “and” shall be read to ask for the broader of the conjunctive or the disjunctive for a particular request, and neither of these words shall be interpreted to limit the scope of a request. The use of a verb in any tense shall be construed as the use of the verb in all other tenses and the singular form shall be deemed to include the plural, and vice-versa. The singular form of any noun shall be deemed to include the plural, and vice-versa.

I. “All” means “any and all”; “any” means “any and all.”

J. “Including” means “including but not limited to.”

K. Words in the masculine, feminine or neuter form shall include each of the other genders.

L. Claims of Privilege. Should you claim a privilege for any document or any information that is requested, please describe such items in sufficient detail and specify in detail all the grounds on which the claim of privilege is based.

INSTRUCTIONS

For purposes of producing documents and in lieu of producing and permitting inspection of all copies of responsive documents at the time and place commanded in the subpoena, documents can be sent via overnight mail or private delivery service to the following address:

Philip Schreiber, Trial Attorney, Tax Division, U.S. Department of Justice, 555 4th Street, NW, Suite 6222, Washington, DC 20001.

REQUESTS

1. All documents that you filed with, sent to, or received from the Internal Revenue Service (“IRS”), the U.S. Treasury Inspector General for Tax Administration (“TIGTA”), the Department of Justice, any other federal agency or any member or committee of the United States Congress, and any state agency, including the California Fair Political Practices Commission, that relate to the National Organization of Marriage’s Complaint against the United States or the IRS’ disclosure or alleged inspection of NOM’s 2008 Form 990. Responsive documents would include copies of NOM’s Form 990s, any other tax returns, documents revealing the identifies of NOM’s donors, IRS Forms 4506-A requesting information pertaining to NOM, IRS Form 8893-C letters pertaining to such a request for NOM’s return or return information, IRS Form 3983-C letters you received from the IRS, any Freedom of Information Act requests you made or any responses you received pertaining to your request.

2. All documents that you filed with, sent to, or received from the IRS that relate to any requests you made for NOM’s Form 990. This would include IRS Forms 4506-A, NOM’s 2007 Form 990, IRS Form 8893-C letters pertaining to such a request for NOM’s return or return information, IRS Form 3983-C letters you received from the IRS, any Freedom of Information Act requests you made or any responses you received pertaining to your request.

3. All documents constituting or referencing communications between or among you and any third party (including, but not limited to, NOM, NOM’s lawyers, directors, officers, or any other individual associated with NOM, the Human Rights Campaign (“HRC”), Joseph Solmonese, Jeremy Hooper, the Huffington Post, Kevin Nix, Joe My God, Pam Spalding, Chino

Blanco, Daniel Robinson, Michael Honigberg, Daniel G Heller, Ben Tobin, Matt Kiggins, Jared Worful, Zachary Erdmann, Robert Koenig, Ian C. Grady, anyone associated with goodasyou.org, Chris Geidner, anyone associated with NOM exposed, any news publication (including Metro Weekly, BuzzFeed, and / or Politico), or any state governmental agency that relate to NOM's Complaint or the IRS' disclosure or alleged inspection of NOM's 2008 Form 990.

4. All documents you have received from any third party that relate to this lawsuit, the IRS' disclosure or alleged inspection of NOM's 2008 Form 990, or any of the contentions related to the complaint you purportedly filed with the California Fair Political Practices Commission regarding NOM's 2008 Form 990 as alleged in the Complaint.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

THE NATIONAL ORGANIZATION FOR)
MARRIAGE, INC.)
)
Plaintiff,)
)
v.)
)
THE UNITED STATES OF AMERICA,)
)
Defendant.)
_____)

Civil Action No. 13-1225-JCC-IDD

**ACKNOWLEDGMENT OF SERVICE OF SUBPOENA
TO FRED KARGER**

I, _____, at _____
_____, hereby acknowledge receipt of
service of the attached subpoena by FedEx overnight mail and affirm the acceptance of such
service as valid and binding upon Fred Karger (as his attorney), as if personally served in
accordance with the applicable Federal Rules of Civil Procedure. Fred Karger waives any right
that he may have to require personal service of the attached subpoena.

Date

Signature

Title