

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

**CITIZENS FOR A STRONG NEW
HAMPSHIRE, INC.,**

Plaintiff,

v.

INTERNAL REVENUE SERVICE,

Defendant.

CIVIL ACTION NO. _____

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Freedom of Information Act

COMPLAINT

Plaintiff Citizens for a Strong New Hampshire, Inc., by and through counsel, brings this action under the federal Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et. seq.*, challenging the failure of Defendant, the Internal Revenue Service (“IRS”), to respond to Plaintiff’s FOIA request within the statutorily prescribed time period, and seeking the disclosure and release of agency records improperly withheld by Defendant IRS:

INTRODUCTION

1. As early as February 2010, and for at least the next three years, the IRS was engaged in a scheme of identifying applications for additional scrutiny from organizations seeking tax-exemption whose names included the terms “Tea Party,” “Patriots,” “9/12,” or other conservative-sounding names, such as “We the People,” or “Take Back the Country.”

2. During this IRS targeting campaign, a number of Democrat senators, including Senator Jeanne Shaheen of New Hampshire, wrote letters to the IRS and its officials demanding that the IRS investigate nonprofits allegedly engaged in “political activities.” Shortly after this

demand, the IRS sent a string of unconstitutional and intrusive inquiries to conservative organizations around the country.

3. At the height of the 2012 presidential campaign—a time at which these “social welfare organizations” were gathering significant support and might have had their biggest impact—Senator Shaheen was a signatory to a letter dated February 16, 2012, urging the IRS to investigate tax-exempt organizations for engaging in “political activities.” Shortly thereafter, Senator Shaheen was a signatory to a second letter to then-IRS Commissioner Douglas Shulman demanding that the IRS “immediately change the administrative framework for enforcement of the tax code as it applies to groups designated as ‘social welfare organizations.’” Along with the other Democrat Senators who signed the letter, Senator Shaheen claimed that an “absence of clarity in the administration of” the laws related to tax-exempt status could result in those organizations being “tempted to abuse” those laws and, “worse,” that they might take advantage of their tax-exempt status “even though they are not legitimate social welfare organizations.” The Senators further opined: “We think existing IRS regulations run afoul of the law” by allowing groups that engage in political activity to “hide behind a façade of charity work.”

4. During the summer of 2014, Plaintiff submitted a lawful FOIA request seeking, among other records, communications between specified IRS officials and Senator Shaheen’s office. The IRS has twice delayed responding to this request, most recently stating that it will not respond until at least late January 2015—months after not only Plaintiff’s lawful request but also the upcoming senatorial and congressional elections. The IRS has provided no lawful excuse for this delay and is in clear violation of FOIA’s requirements.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. § 552(a)(6)(C)(i), and 28 U.S.C. § 1331, because this action arises under the federal FOIA, and Plaintiff has exhausted its administrative remedies.

6. Venue is proper in this district pursuant to 5 U.S.C. § 552(a)(4)(B) because Plaintiff, the complainant, resides in this district.

7. This Court has authority to award declaratory relief pursuant to 28 U.S.C. § 2201.

8. This Court has authority to award injunctive relief pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 2202.

PARTIES

9. Plaintiff Citizens for a Strong New Hampshire, Inc., is a non-partisan coalition of concerned citizens, community leaders, and other stakeholders concerned with promoting and preserving strong families and a strong economy for New Hampshire. Plaintiff is actively engaged in disseminating information to the public regarding issues of interest and importance to the citizens of New Hampshire, including information about New Hampshire's elected officials. Citizens for a Strong New Hampshire, Inc.'s mailing address is 373 South Willow Street, PMB # 105, Manchester, New Hampshire.

10. Defendant IRS is an agency of the United States that is responsible for administration and enforcement of provisions of the Internal Revenue Code, as well as all other IRS rules, regulations, policies, procedures, and practices, and is in control and possession of the records sought by Plaintiff. The IRS is an agency within the meaning of 5 U.S.C. § 552(f)(1).

FACTUAL ALLEGATIONS

11. On June 18, 2014, Citizens for a Strong New Hampshire, Inc., through its executive director, submitted a request, pursuant to 5 U.S.C. § 552, via certified mail to a designated FOIA contact for the IRS, with copies to the Offices of New Hampshire Senator Jeanne Shaheen and Congresswoman Carol Shea-Porter, requesting specifically “[a]ny and all documents or records of emails or correspondence to or from New Hampshire Senator Senator [sic] Jeanne Shaheen and Congresswoman Carol Shea-Porter (NH-01) to or from former IRS Commissioner Doug Shulman, former Commissioner Steve Miller, and/or former head of the tax exempt groups Lois Lerner between the dates of January 1, 2009 and May 21, 2013.” Exhibit 1, June 18, 2014, FOIA Request.

12. In a letter dated July 23, 2014, the IRS acknowledged that on June 24, 2014, it received Plaintiff’s June 18th FOIA request. Exhibit 2, IRS July 23, 2014, Letter.

13. In this letter, the IRS identified July 23, 2014, as the 20-day response deadline imposed on it by FOIA, invoked FOIA’s ten-day statutory extension provision to extend the response date to August 6, 2014, but wrote that it would not be able to comply with the request by that date, and imposed its own extra-statutory response deadline of October 23, 2014.

14. The IRS further expressly acknowledged in its July 23rd letter that the administrative appeal process applies only to denials of requests, that such process would not apply to the IRS’s lack of response to Citizens for a Strong New Hampshire, Inc.’s request for records, and that Citizens for a Strong New Hampshire, Inc., would be entitled to file suit regarding the lack of response to its FOIA request on or after August 6, 2014.

15. Rather than responding to the FOIA request on October 23rd, the IRS sent Citizens for a Strong New Hampshire, Inc., a letter dated October 22, 2014, in which it stated that it

would further delay its response to the June request for records. Exhibit 3, IRS October 22, 2014, Letter.

16. The October 22nd letter did not include a date on which the IRS would provide an actual response to the request but only stated that Citizens for a Strong New Hampshire, Inc., could expect to hear from the IRS by January 27, 2015, if it still had not provided a response.

17. The general elections for members of the United States Congress, including Senator Shaheen and Congresswoman Shea-Porter, will take place on Tuesday, November 4, 2014.

18. Had the IRS responded in a timely manner to Citizens for a Strong New Hampshire, Inc.'s FOIA request, or even by its self-imposed, extra-statutory deadline of October 23, 2014, Citizens for a Strong New Hampshire, Inc., could have disseminated the responsive information to the public, including to the voting citizens of New Hampshire.

19. The failure of the IRS to respond to Citizens for a Strong New Hampshire, Inc.'s FOIA request, and its expressed intention to continue to delay any such response until well after November 4, 2014, has deprived Citizens for a Strong New Hampshire, Inc., of the opportunity to obtain and effectively convey to the voting public vital information about public officials seeking re-election to congressional office.

CAUSES OF ACTION

COUNT I

Violation of the Freedom of Information Act: Decision Deadline Violation

20. The federal FOIA establishes a 20-day deadline by which a federal agency must make and issue a decision regarding compliance with a request for records made pursuant to the statute. 5 U.S.C. § 552(a)(6)(A)(i).

21. FOIA permits a federal agency, in unusual circumstances, to extend the 20-day response deadline for a period not to exceed ten (10) additional working days. 5 U.S.C. § 552(a)(6)(B).

22. Plaintiff Citizens for a Strong New Hampshire, Inc., has a statutory right to have Defendant IRS process its FOIA request in a timely manner and in accordance with the requirements set forth in 5 U.S.C. § 552(a)(6).

23. The federal FOIA provides a cause of action for a complainant from whom a federal agency has withheld requested records. 5 U.S.C. § 552(a)(4)(B).

24. Through its continued delay in responding to Plaintiff's lawful request for records, and its improper withholding of such requested records, Defendant has failed to comply with FOIA's prescribed deadlines for responding to a request for records and has violated Plaintiff's statutory rights.

25. Because of Defendant's failure to comply with the applicable time limit provisions of 5 U.S.C. § 552(a)(6), Plaintiff has exhausted its administrative remedies with regard to its request for records. 5 U.S.C. § 552(a)(6)(C)(i).

26. There are no "exceptional circumstances" that justify Defendant IRS's prolonged delay in responding to Plaintiff's lawful FOIA request.

27. Plaintiff is being irreparably harmed by Defendant's unlawful withholding of requested records, and Plaintiff will continue to be irreparably harmed unless Defendant IRS is compelled to respond to Plaintiff's lawful request.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Citizens for a Strong New Hampshire, Inc., respectfully requests that the Court enter judgment against Defendant, and provide Plaintiff with the following relief:

(A) An order enjoining the IRS from withholding the records requested by Plaintiff and requiring the IRS to produce the requested records to Plaintiff;

(B) A declaratory judgment that the IRS's actions violated Plaintiff's statutory rights under 5 U.S.C. § 552;

(C) An order awarding Plaintiff its reasonable attorneys' fees, costs, and other costs and disbursements in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(i); and

(D) All further relief to which Plaintiff may be entitled.

Dated: October 30, 2014

Respectfully submitted,

CITIZENS FOR A STRONG
NEW HAMPSHIRE, INC.,

By its attorneys,

/s/ Bryan K. Gould

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*Admission *pro hac vice* pending