

Business, Energy, and Election Law, PC

3277 S. White Road # 233 • San Jose, CA 95148 • 415.236.2048 • 213.405.2416 fax

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April 20, 2014

## Via Electronic Mail

Brian Joseph, President  
Dennis Revell, Secretary  
Steven Andersen, Treasurer  
Sacramento Press Club  
1017 L St. # 434  
Sacramento, CA 95814

Re: Exclusion of Green Party Candidate from Secretary of State Debate

Dear Messrs. Joseph, Revell, and Andersen:

We **demand** that the Sacramento Press Club allow our client, Green Party candidate David Curtis, to participate in the Sacramento Press Club's Secretary of State candidate debate (the "Debate").

A week ago, Mr. Curtis placed third in the Field Poll for Secretary of State candidates. Yet instead of inviting Mr. Curtis to participate in the Debate, your group inexplicably invited the candidates who had finished first, second, *fourth*, and *fifth*.

Your organization's decision to exclude Mr. Curtis brazenly violates federal law governing tax-exempt groups. Equally troubling, its arbitrary decision calls into question a core principle mentioned on your group's website: that it is "committed to *informing and educating* its members and the public[.]"<sup>1</sup>

Federal Law. Your group violated federal law when it refused to provide Mr. Curtis a seat at the table. Nearly a century ago, Judge Learned Hand warned against the danger of government-subsidized political activity: "[P]olitical agitation ... however innocent the aim ... must be conducted *without public subvention*."<sup>2</sup>

Because your group receives tax exemptions from federal and state taxes, it is forbidden from playing favorites among candidates, and must remain "*neutral* in political affairs."<sup>3</sup> In that regard, as the federal court in Washington, DC pointedly noted, a group holding a political debate "*must* be able to show that their objective criteria were used to pick the participants."<sup>4</sup> If a group fails to do so, its tax-exempt status *must be revoked*.<sup>5</sup>

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<sup>1</sup> Sacramento Press Club website, available at <http://sacpressclub.org/about-us> (italics added).

<sup>2</sup> *Slee v. Commissioner*, 42 F.2d 184, 185 (2d Cir. 1930) (italics added) (quoted by *Ass'n of the Bar of City of N.Y. v. Commissioner*, 858 F.2d 876, 879 (2d Cir. 1988)).

<sup>3</sup> *Ass'n of the Bar of City of N.Y., supra*, 858 F.2d at 879 (italics added).

<sup>4</sup> *La Botz v. FEC*, 889 F.Supp.2d 51, 62 (D.D.C. 2012) (italics added).

<sup>5</sup> *Ass'n of the Bar of City of N.Y., supra*, 858 F.2d at 879.

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In light of the Field Poll, we fail to see *any* “objective criteria” that would justify excluding Mr. Curtis, when your group has also invited candidates who had polled *behind Mr. Curtis*.

Informing and Educating the Public. Finally, by excluding Mr. Curtis from the Debate, your group makes a mockery of its professed commitment to “inform and educate” the public. Unlike your group, the League of Women Voters (Education Fund), ACLU (Voting Rights Project), and California Common Cause have all invited Mr. Curtis to televised candidate forums: the first was held in Los Angeles on March 3, 2014; the second will be held in San Diego on May 6, 2014.

Mr. Curtis has already been interviewed by a number of key media outlets, including the editorial boards of the Los Angeles *Times* and the San Francisco *Chronicle*. In addition, Mr. Curtis has been invited to speak at Orrick, Herrington, and Sutcliffe, a prominent Silicon Valley law firm. By muzzling the voice of a candidate who may not be as “well connected” as other candidates, your group stands alone.

Simply put, playing favorites in a political debate is illegal, threatens your group’s tax-exempt status, and may harm your group’s reputation.

We call on the Sacramento Press Club (1) to *immediately reverse* its unprincipled, unwise, and unfair decision to exclude Mr. Curtis, and (2) to allow Mr. Curtis to participate in its Debate.

We look forward to your prompt response.

Sincerely,

Gautam Dutta
Managing Partner