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Lawless, Unethical Attorneys General Attack Tocqueville's Democracy

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Nonprofit organizations, whose missions can range from faith-based help for the infirmed, homeless and abused, to holding politicians, government and even the news media accountable, are an essential part of citizen-based, nongovernmental democracy.

Alexis de Tocqueville described America in the 19th century as “the most democratic country on the face of the earth” because Americans had “carried to the highest perfection the art of pursuing in common the object of their common desires and have applied this new science to the greatest number of purposes.”

“It is clear that if each citizen,” wrote Tocqueville, “as he becomes individually weaker and consequently more incapable in isolation of preserving his freedom, does not learn the art of uniting with those like him to defend it, tyranny will necessarily grow with equality.”

Fast forward 227 years to 1958 and the civil rights movement. Alabama Attorney General John Patterson sued the NAACP and demanded that it provide the names and addresses of its Alabama members. In the landmark decision *NAACP v. Alabama*, the Supreme Court said Patterson was violating the constitutionally protected right of private association. Patterson was later endorsed for governor by the Ku Klux Klan.

Today, California AG Kamala Harris is engaging in a 21st century version of *NAACP v. Alabama*, demanding that all nonprofit organizations registering with her office to ask citizens for contributions disclose to her the names and addresses of donors listed on a federally protected confidential tax return schedule filed with the IRS. The Center for Competitive Politics has asked the U.S. Supreme Court to hear its challenge to Ms. Harris.

Several friend-of-the-court briefs against Ms. Harris were filed by major think tanks and other organizations from the nonprofit right including Cato Institute, Competitive Enterprise Institute, Institute for Justice, Center for Constitutional Jurisprudence, Pacific Legal Foundation and others.

As reported at [CNSNews](#), 58 organizations filed [one amicus brief](#) describing how compounded lawbreaking by Ms. Harris intimidates and violates freedom of association. The brief states:

“In a way more comprehensive and arbitrary than the Alabama attorney general’s ... demands ruled unconstitutional in *NAACP v. Alabama*, [Harris] is using the licensing requirement as a substitute for an unconstitutional general warrant, which disrupts, intimidates, and trespasses on security of the liberty of private association.”

This brief also describes extensive collaboration between notorious former IRS official Lois Lerner and the National Association of State Charity Officials (NASCO). NASCO consists of officials from attorney general and other state offices who happen to be the biggest violators of charity laws through their lawless and unprofessional enforcement. CNSNews quotes attorney Chris T. Craig: “The petition before the Supreme Court argues that donors’ private information ‘is protected under the Federal Internal Revenue Code.’”

There are, of course, attorneys general who respect rights and the Constitution, and follow the law. Three state AGs combined to file their own [amicus brief](#) against Ms. Harris’ actions. Addressing examples of political retaliation against citizens by government officials, the brief states, “[D]isclosure rules invariably chill freedom of association Merely placing this [donor] information in the hands of government officials constitutes a cognizable First Amendment injury.”

The problem of lawless state attorneys general extends beyond Kamala Harris. Competitive Enterprise Institute recently released its list of [The Nation’s Worst State Attorneys General 2015](#). Based on four main categories – (1) ethical breaches and selective applications of the law, (2) fabricating law, (3) usurping legislative powers, and (4) predatory practices – Harris was number four of six on this list of the worst.

Minnesota’s Lori Swanson didn’t make that list of six. Her office, however, is an example of the less-publicized but routine lawlessness and unethical behavior among many NASCO members.

A 2008 [MinnPost.com story](#) reports “a series of allegations that lawyers in the [attorney general’s] office felt pressured to do ... they considered unethical” by Swanson and her predecessor/mentor Mike Hatch, and stated:

“[M]ore than 30 sources I interviewed for this story asked for anonymity because they fear retaliation. The climate of fear created is an important part of this story. I hasten to add that for all the sources who describe the Hatch-Swanson management style as vindictive, they were unable to cite specific cases of individuals whose lives and careers were destroyed.

The corrupt and now-defunct “community organizing” apparatus ACORN received \$249,000 – one-third – of a settlement supposedly for Minnesotans reached by Hatch and Swanson with Capital One Bank in 2006. Swanson then received a grade of A+ from ACORN in 2008, in time for her 2010 race when she received nearly [half her campaign contributions](#) from outside Minnesota.

Swanson has 95 assistant attorneys general, and another 19 lawyers in her office. Their methods of regulating charities include making intimidating demands for documents and information without citing any legal authority. That method helps hide whether or not they are actually enforcing – and complying with – laws.

When I asked Swanson's Assistant AG Elizabeth Kremenak to identify the legal authority under which she was issuing one of these demands, she responded by threatening me with a "civil investigative demand," which is a warrant issued by her but not signed by a judge, and lacking probable cause.

Another one of the 95 assistant AGs told me Swanson's office had no intent of providing charities with notice of legal authority for the many demands these government lawyers make.

The willful refusal to provide basic notice and transparency so charities may protect their rights against these lawless, bullying assistant AGs is unethical – but common among NASCO members. Combined with more grandiose methods such as those employed by Kamala Harris, these are statist assaults on Toquevillian, nongovernmental democracy in America.