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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CALAVERAS

14 Cindy Lavagetto,
15 John Adams,
16 Richard Mines,
17 Don Payne,
18 William Wittmer,
19 Patricia Payne,
20 Holly Mines,
21 Michael Stockard and
22 Rhoda Nussbaum,

Plaintiffs,

v.

County of Calaveras,

Defendant.

Civil Case No.:

**Verified petition for writ of mandate
and complaint for declaratory relief
under Cal. Const. art. I § 4 and Cal.
Const. art. XVI § 5**

INTRODUCTION

1 1. The Calaveras County Board of Supervisors passed a resolution recognizing a local
2 Christian ministry for, among other things, its “advocacy and education” “to enlighten and
3 strengthen the lives of women and young women in Calaveras County by inviting them to test
4 and see for themselves the many blessings that can come from living the teachings of Christ.”

5 2. After Plaintiffs and other County residents objected to this language on the grounds
6 that it constituted an unconstitutional endorsement of religion, the Board’s staff recommended
7 that the Board rescind the resolution and adopt one that recognized the organization for its
8 community work without endorsing its religious views.

9 3. Instead, on July 8, 2014, after two hours of public comment and debate that focused
10 largely on the issue of whether the original resolution constituted an impermissible endorsement
11 of religion, the Board decided to reject its staff recommendation and instead to adopt a second
12 resolution that included this same controversial language quoted above.

13 4. Our state Constitution protects the rights of individuals and private organizations to
14 practice and promote their religion as they see fit and at the same time prevents the *government*
15 from promoting a specific religion or religion in general. As our Supreme Court has observed,
16 “[i]t would be difficult to imagine a more sweeping statement of the principle of governmental
17 impartiality in the field of religion’ than that found in the ‘no preference’ clause [of Article I § 4
18 of the California Constitution], and California courts have interpreted the clause as being more
19 protective of the principle of separation than the federal guarantee.” (*Sands v. Morongo Unified*
20 *Sch. Dist.* (1991) 53 Cal.3d 863, 883 (internal citations omitted)). And Article XVI § 5 of our
21 state Constitution “prohibits not only material aid to religion [by the government], but *any*
22 official involvement that promotes religion.” (*Id.* at p. 883).

23 5. By enacting an *official County resolution* that endorses a specific religious viewpoint,
24 the Board violated these fundamental constitutional principles. Plaintiffs do not question the
25 Board’s authority to recognize the civic works of religious organizations in the same way that it
26 may recognize the civic works of secular organizations. And Plaintiffs fully support the right of
27 every individual – including elected officials – to practice, speak about, and promote religion.
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1 But Plaintiffs do object to the official governmental endorsement of religion. Our constitutional
2 protections for the freedom of religion and of speech mean that private organizations and
3 individuals have the constitutional right to promote the view that women can “enlighten”
4 themselves by “see[ing] for themselves the many blessings that can come from living the
5 teachings of Christ.” But these same protections mean that the government – which has no First
6 Amendment rights – cannot lawfully endorse these religious efforts. And that is precisely what
7 the County has done here.

8 6. The Board meetings during which the resolution was discussed exemplify the type of
9 religious strife that our constitution aims to prevent. “Respect for the differing religious choices
10 of the people of this country requires that government neither place its stamp of approval on any
11 particular religious practice, nor appear to take a stand on any religious question. In a world
12 frequently torn by religious factionalism and the violence tragically associated with political
13 division along religious lines, our nation’s position of governmental neutrality on religious
14 matters stands as an illuminating example of the true meaning of freedom and tolerance.”
15 (*Sands*, 53 Cal.3d at p. 884).

16 7. Plaintiffs therefore ask this Court to declare that the Board’s July 8, 2014 resolution
17 violates Article I, § 4 and Article XVI, § 5 of the California Constitution, and to issue a writ of
18 mandate to require the County to ensure that any official copies of this Resolution it makes
19 available to the public reflect this holding.¹

20 **JURISDICTION AND VENUE**

21 8. This Court has jurisdiction under Article VI, § 10, of the California Constitution and
22 California Code of Civil Procedure § 410.10.

23 9. Venue in this Court is proper because the action arose in this County and the
24 defendant is situated in this County. *See id.* §§ 393(b), 394(a).

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27 ¹ References in this complaint to “the Resolution” refer to this July 8, 2014 resolution, Number
28 2014-101, attached as Exhibit A to the complaint.

PARTIES

1 10. All of the Plaintiffs are citizens and taxpayers of Calaveras County:

2 11. Plaintiff Cindy Lavagetto is a resident of Calaveras County. She is a retired employee
3 of the California State Senate where she served as Deputy Executive Officer. Ms. Lavagetto is
4 Jewish. Because she is a member of a minority religious community in the County, Ms.
5 Lavagetto believes that government neutrality on matters of religion is essential to the exercise
6 of her faith. For her, the July 8 Resolution is a public announcement that the County
7 government prefers Christianity over other religions. She believes the government can recognize
8 individuals and groups, whether faith-based or not, for their community service without
9 promoting a specific religion. Ms. Lavagetto fears that the resolution’s public endorsement of
10 Christianity creates an environment that is conducive to discrimination on the basis of religion.
11 A judicial declaration that the Resolution is unconstitutional would reduce her concerns that this
12 will happen, in part because it would clarify to the public that this official endorsement of
13 religion was improper and would make it less likely that the County will take similar action in
14 the future.

15 12. Ms. Lavagetto owns real property in Calaveras County and has been assessed and has
16 paid property taxes to the County within the last year.

17 13. Plaintiff John Adams is a resident of Calaveras County. He is a retired professor of
18 organizational systems and a former corporate manager. His spiritual practice includes the
19 shared elements of Buddhism, Christianity, Hinduism and Judaism. For Dr. Adams, the
20 Resolution expresses the Calaveras Board of Supervisors’ preference for a particular creed of
21 Christianity. The Resolution conveys the Board’s approval of the Door of Hope’s belief that
22 according to the teachings of Christ life begins at conception. Dr. Adams fears that if the County
23 government continues to express its preference for a particular religious view, then he and
24 others with different belief systems may be treated as second-class citizens and could in the
25 future be limited in their free exercise of religion. On May 15, 2014, Dr. Adams and other
26 Calaveras County residents joined the American Civil Liberties Union of Northern California
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1 (ACLU-NC) in asking the Board to repeal the resolution or that part of it that references the
2 teachings of Christ.

3 14. Dr. Adams owns real property in Calaveras County and has been assessed and has
4 paid property taxes to the County within the last year.

5 15. Plaintiff Richard Mines is a resident of Calaveras County. He is a retired economist
6 and survey researcher with a specialty in farm labor and immigration. Mr. Mines is Jewish. For
7 him, the Resolution conveys the Board's preference for a particular religion. The Resolution's
8 recognition of the Door of Hope's work to invite women to experience the "blessings that can
9 come from living the teachings of Christ" suggests that it is better to practice Christianity than
10 any other religion. Mr. Mines believes that the government should not endorse or disapprove of
11 a particular religion and that he should be able to practice any religion he chooses. The
12 endorsement of a religion distracts from and runs counter to the purpose of government, which
13 is to serve the public interest. A judicial declaration that the Resolution is unconstitutional
14 would make this clear to the media and to the public. Mr. Mines joined the ACLU-NC's May 15
15 letter to the Board.

16 16. Mr. Mines owns real property in Calaveras County and has been assessed and has
17 paid property taxes to the County within the last year.

18 17. Plaintiff Don Payne is a resident of Calaveras County. He is a licensed general
19 building contractor. Mr. Payne is a Unitarian Universalist. For him, the Resolution conveys the
20 County government's preference for a single religion, Christianity. He fears that if the
21 Resolution stands, then County government officials will continue to impose limits on the
22 religious freedom of those who do not share their religious beliefs.

23 18. Mr. Payne owns real property in Calaveras County and has been assessed and has
24 paid property taxes to the County within the last year.

25 19. Plaintiff William Wittmer is a resident of Calaveras County. He is a retired fire
26 department battalion chief and a part-time instructor in fire science. Mr. Wittmer believes in the
27 constitutional guarantee of separation of church and state, and he believes that the government
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1 should remain neutral in religious matters. Mr. Wittmer is Jewish, but he would not support a
2 County resolution favoring Judaism any more than one supporting Islam or Christianity. For
3 him, the Board's actions put it on a slippery path that could lead to the government's imposition
4 of its preferred religion on all Calaveras County residents in other ways. A judicial declaration
5 that the Resolution is unconstitutional would reduce his concerns that this will happen.

6 20. Mr. Wittmer owns real property in Calaveras County and has been assessed and has
7 paid property taxes to the County within the last year.

8 21. Plaintiff Patricia Payne is a resident of Calaveras County. She is an artist, retired
9 museum curator and volunteer with the Calaveras Animal Services. Ms. Payne is a Unitarian
10 Universalist. For her, the Resolution conveys the County government's preference for a single
11 religion and a particular religious view that denounces abortion and a woman's right to have
12 autonomy over her body. Ms. Payne fears that if this government endorsement of religion
13 stands, then it will create divisions in her community and foster an environment of intolerance.
14 A judicial declaration that the Resolution is unconstitutional would help to alleviate these fears.

15 22. Ms. Payne owns real property in Calaveras County and has been assessed and has
16 paid property taxes to the County within the last year.

17 23. Plaintiff Holly Mines is a resident of Calaveras County. She is a retired bilingual
18 social worker and has been a community volunteer and activist most of her life. Ms. Mines does
19 not practice a particular religion. She operates from a personal system of morals and values
20 which is not derived from religious practice. For Ms. Mines, the wording of the Resolution
21 conveys the Board of Supervisors' endorsement of the religious beliefs of the honored
22 organization. She is an active member of the political community in Calaveras County. As a
23 result of the Resolution, Ms. Mines fears that her voice in the local political debate could be
24 diminished, or even worse, dismissed by the Board or members of the community because she
25 does not practice Christianity and does not identify with a religion. A judicial declaration that
26 the Resolution is unconstitutional would make it clear that the government cannot discount her
27 opinion because of her personal religious beliefs.

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1 24. Ms. Mines joined the ACLU-NC's May 15 letter to the Board. She also attended the
2 July 8, 2014 Board meeting and commented that "it's possible to write a resolution which
3 acknowledges the full scope of the work" of the Door of Hope "without referring to its religious
4 practices."

5 25. Ms. Mines owns real property in Calaveras County and has been assessed and has
6 paid property taxes to the County within the last year.

7 26. Plaintiff Michael Stockard is a resident of Calaveras County. Mr. Stockard is an
8 atheist. He believes that the government should remain neutral in matters of religion. For him,
9 the Resolution conveys the Board of Supervisors' support for the Door of Hope's faith-based
10 position against abortion. Mr. Stockard joined the ACLU-NC's May 15 letter to the Board. He
11 also attended the July 8, 2014 Board meeting and commented that although the Supervisors
12 have a personal right to take a stand on these issues, they have a duty to remain neutral on
13 matters of religion when acting in a representative capacity on behalf of their constituents.

14 27. Mr. Stockard owns real property in Calaveras County and has been assessed and has
15 paid property taxes to the County within the last year.

16 28. Plaintiff Rhoda Nussbaum is a resident of Calaveras County. She is a retired Ob/Gyn
17 who practiced medicine for 30 years. She is Jewish and grew up in a family of Holocaust
18 survivors. Dr. Nussbaum's religious beliefs include elements of Judaism as well as other faiths.
19 Dr. Nussbaum believes that every individual should be free to exercise the religion of her choice
20 without the government's approval or disapproval of a particular religious view. For her, the
21 Resolution conveys the Board's preference for Christianity. She fears that if the Resolution
22 stands, then County government officials will be free to impose their religious views on her and
23 other members of her community. A judicial declaration that the Resolution is invalid would
24 assure her that this will not in fact happen and that the law does in fact protect her right to a
25 government that does not favor one religion over another.

26 29. Dr. Nussbaum joined the ACLU-NC's May 15 letter to the Board. She also attended
27 the July 8, 2014 Board meeting and commented that the resolution does not represent her
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1 because its language focuses on Christianity. Dr. Nussbaum asked the Board to rescind the
2 resolution or adopt one that is consistent with the Board’s duty to represent all County residents.

3 30. Dr. Nussbaum owns real property in Calaveras County and has been assessed and has
4 paid property taxes to the County within the last year.

5 31. Defendant County of Calaveras is a legal subdivision of the State of California.
6 Calaveras County has a population of approximately 44,515.² It is a religiously diverse
7 community.³ Approximately 69.0% of the total population regularly attend religious services.⁴
8 The Calaveras Board of Supervisors (the “Board”) is the County’s governing body.

9
10 **FACTS**

11 **The Board’s April 8, 2014 Adoption of Resolution 2014-035 (the first resolution).**

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13 32. Agenda item three for the April 8, 2014 Board meeting was a “resolution recognizing
14 the Calaveras Door of Hope for their important work on behalf of women and children in
15 [Calaveras] County.” A true copy of the County’s agenda submittal for this resolution, which
16 was subsequently designated Resolution 2014-035, is attached to this complaint as Exhibit B.

17 33. The agenda summarized the item as follows: “In conjunction with the annual ‘40
18 Days for Life’ program which takes place each year in the months of March and April,
19 celebrating life, leading up to the Easter holiday, [the Board is] recognizing the Calaveras ‘Door
20 of Hope’ that has helped local women preserve and save lives in our county.” *Id.*

21 34. In July 2014, the Calaveras Door of Hope described itself on its website as “a Non-
22 profit ministry. The Mission of Door of Hope is to bring compassionate help and hope to
23 women and teens who are unprepared for pregnancy; to present sexual abstinence as a positive
24 lifestyle for singles; to provide opportunity for healing and restoration to those who have been

25 _____
26 ² <http://quickfacts.census.gov/qfd/states/06/06009.html>.

27 ³ http://www.city-data.com/county/Calaveras_County-CA.html;
<http://www.homefacts.com/religions/California/Calaveras-County.html>.

28 ⁴ http://www.thearda.com/rcms2010/r/c/06/rcms2010_06009_county_name_2010.asp.

1 hurt by abortion; and to present Jesus Christ as Savior and Lord.” A true copy of the Calaveras
2 Door of Hope’s website, retrieved from <http://www.support4life.info/About.html> on July 22,
3 2014, is attached to this complaint as Exhibit C.

4 35. “40 Days for Life” is a “campaign” that “puts into action a desire to cooperate with
5 God in the carrying out of His plan for the end of abortion” using a “three-point program”
6 including “Prayer and fasting,” “Constant vigil,” and “Community outreach.” A true copy of the
7 “40 Days for Life” website, <http://40daysforlife.com/mission/>, as of December 4, 2014, is
8 attached to this complaint as Exhibit D.

9 36. On April 8, 2014, the Calaveras County Board of Supervisors adopted Resolution
10 Number 2014-035.

11 37. Resolution 2014-035 is titled “Resolution recognizing Calaveras Door of Hope for
12 serving the women of Calaveras County and helping to save the lives of our most vulnerable
13 children.” A true copy of Resolution Number 2014-035 is attached to this complaint as Exhibit
14 E.

15 38. The text of Resolution 2014-035, as adopted, reads as follows:

- 16 a. “WHEREAS, The Mission of Door of Hope is to bring compassionate help and
17 hope to women and teens who are unprepared for pregnancy; and
- 18 b. WHEREAS, Calaveras Door of Hope is part of a national network of pregnancy
19 centers that share the common mission of ministering to women and men in need;
20 and
- 21 c. WHEREAS, Calaveras Door of Hope endeavors to save the lives of unborn children
22 by partnering with community members who volunteer their time, financial
23 resources and prayers supporting their clients with kindness and compassion while
24 listening without judgment; and
- 25 d. WHEREAS, Through advocacy and education the Door of Hope seeks to enlighten
26 and strengthen the lives of women and young women in Calaveras County by
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inviting them to test and see for themselves the many blessings that can come from living the teachings of Christ.

e. NOW THEREFORE BE IT RESOLVED, that the Calaveras County Board of Supervisors recognizes the valiant efforts made by members of and contributors to the Calaveras Door of Hope to enhance the quality for women in our county and specifically those going through the very difficult circumstances related to unplanned pregnancy.” *Id.* (paragraph lettering added).

39. The Board considered this resolution at its April 8, 2014 meeting. A true copy of the video recording of the April 8, 2014 Board of Supervisors meeting is attached to this complaint as Exhibit F. A true copy of the transcript of the April 8, 2014 Board of Supervisors meeting is attached to this complaint as Exhibit G.

40. The Board did not allow time for public comment before it voted on the resolution but did allow the Door of Hope’s executive director to speak. In addition, several supervisors spoke about the resolution before they voted.

41. Supervisor Merita Callaway stated that she would abstain because the Board was “being asked to recognize a specific religious point of view and I do not feel that it is our role.” *Id.* at 1. Supervisor Callaway discussed her understanding of the First Amendment, that she agreed with the separation between church and state, and stated that “the right to believe or to not believe” “should not be subject to a political process.” *Id.* She added that the Constitution “does not recognize government’s right to decide theological questions or positions. It’s a subject for individuals, families, and the religious community, not us.” *Id.* at 1-2. Supervisor Callaway concluded, “I commend the Door of Hope for their work and what they believe in, but I don’t think it is the purview of this board to be supporting this resolution as it is presented to us today.” *Id.* at 2.

42. In response, the resolution’s sponsor, Supervisor Darren Spellman, gave a lengthy explanation of his understanding of the federal constitutional issues at stake, asserting that “the

1 separation of church and state, was in a letter, in the form of a letter from” Thomas Jefferson,
2 denying that the resolution violated the federal constitution. *Id.* at 2.

3 43. Supervisor Ponte then invited Sissy Hedrick, the executive director of Calaveras Door
4 of Hope, to speak. Ms. Hedrick explained the services the organization provides to the
5 community.

6 44. Supervisor Cliff Edson and Supervisor Ponte also made comments before the vote.

7 45. The Board adopted Resolution 2014-035 by a vote of 3 in favor, 1 opposed, and 1
8 abstention. *Id.* at 5.

9 46. After the resolution was adopted and read into the record, Supervisor Ponte invited
10 public comment by those wishing to speak on the resolution. *Id.*

11 47. One member of the public commented that “[w]omen’s access to healthcare is a
12 quality of life issue. Which should not be obstructed nor influenced by the endorsement of any
13 particular religious perspective by the Board of Supervisors. *Id.* at 7. She added, “the
14 endorsement of any particular religion or ministry by a resolution of the Board is an act that
15 excludes members of the public who do not practice that religion or who may be atheists or
16 agnostics. A resolution that recognizes an organization whose purpose is to promote quote ‘the
17 many blessings that can come from living the teachings of Christ,’ unquote, discourages broad-
18 based participation in local government. Because Christianity is an exclusive religion that
19 recognizes no other God.” *Id.* at 6. She concluded, “Not only does the resolution enlist the
20 Board of Supervisors in God’s army, it elevates Christianity over all other religions in Calaveras
21 County.” *Id.*

22 48. Another member of the public commented, “There are good people involved in [Door
23 of Hope]—this is not what it’s about. It’s about you being elected officials and keeping religion
24 out of what you approve.” *Id.* at 8. Other commenters expressed their approval of the resolution.
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Plaintiffs’ letter asking the Board to repeal Resolution 2014-035

49. After receiving complaints from residents of Calaveras County, lawyers with the American Civil Liberties Union of Northern California (ACLU-NC) submitted a letter to the Board on behalf of over 20 Calaveras County residents, 5 of whom are Plaintiffs in this matter. A true copy of this May 15, 2014 letter is attached to this complaint as pages 3-6 of Exhibit H (page numbering added).

50. This letter explained that the resolution’s recognition of the Door of Hope’s “advocacy and education” that “seeks to enlighten and strengthen the lives of women and young women in Calaveras County by inviting them to test and see for themselves the many blessings that can come from living the teachings of Christ” violated two separate provisions of the California Constitution. *Id.* at 3. It therefore asked the Board to repeal the resolution or the part of it that violates the Constitution. *Id.* at 5.

51. The letter also explained that the Board had violated the Brown Act by failing to allow for public comment before the vote on the resolution was taken. *Id.* at 4.

52. On May 28, 2014, the Calaveras County Counsel responded to the letter. A true copy of this response is attached to this complaint as pages 7-10 of Exhibit H. This response stated that although the County did not believe there was anything illegal about the resolution or its adoption, the Board intended to consider “rescission and possible re-adoption of” the resolution at a future Board meeting. *Id.* at 10.

The Board’s repeal of Resolution 2014-035, rejection of the alternatives drafted by its staff, and adoption of Resolution 2014-101

53. Board Agenda item 13 for the July 8, 2014 Board meeting was a “resolution rescinding Resolution No. 2014-35 ... and possible readoption of a similar resolution.” A true copy of the agenda submittal for this item is attached to this complaint as Exhibit H, with page numbering added. A true copy of the video recording of the July 8, 2014 Board of Supervisors

1 meeting is attached to this complaint as Exhibits I and J. A true copy of the transcript of the July
2 8, 2014 Board of Supervisors meeting is attached to this complaint as Exhibit K.

3 54. The Board staff summary for this item discussed the prior adoption of Resolution
4 2014-035, the correspondence between the ACLU-NC and the County, and the importance of
5 allowing public comments. *See* Exhibit H at 1. The Board agenda submittal also included a copy
6 of the correspondence between the ACLU-NC and the Board and County Counsel, *id.* at 3-11, a
7 draft resolution rescinding Resolution 2014-035, *id.* at 12-13, and a draft revised resolution
8 recognizing Calaveras Door of Hope for its community service. *Id.* at 14-15. This draft
9 resolution, *see* Ex. H at 14-15, had been “processed through the Admin office and county
10 counsel.” Ex. K at 2.

11 55. The draft revised resolution differed from Resolution 2014-035 in several ways:
12 First, it described the history of the prior resolution. Second, it omitted the language that
13 Plaintiffs had objected to as unconstitutional in their May 15 letter, as well as some of the
14 details of the Door of Hope’s mission. Third, it expressly stated that the Board’s recognition was
15 “not based on any mission of the Door of Hope” and was simply “intended to show the same
16 type of recognition that the Board of Supervisors has given to many other community
17 organizations.” Ex. H at 15.

18 56. Plaintiff Rhoda Nussbaum spoke at the meeting, asking the Board to rescind the
19 original resolution and adopt the draft resolution recommended by county staff or work with
20 Supervisor Spellman to draft an alternative that considers the Board’s “responsibility to
21 represent all the people of this county.” Ex. K at 5. She stated that “many of the people that I
22 know who live in this county do not define themselves as Christians.” *Id.* Dr. Nussbaum
23 reminded the Board, “You don’t sit there to represent your own religious, moral views. To me,
24 this resolution is putting forward personal, religious, moral views.” *Id.*

25 57. Plaintiff Holly Mines also spoke at the meeting, saying, “I think it’s possible to write
26 a resolution which acknowledges the full scope of work that the organization does without
27 making it, without referring to its religious practices.” Ex. K at 8.

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1 58. Plaintiff Mick Stockard also spoke at the meeting, objecting that the Supervisors were
2 “taking a position on something that’s outside the job description of a county supervisor.” *Id.* at
3 12. He said, “[Y]ou went beyond the limits of what you’re here for,” and “when you put your
4 supervisors’ hat on and represent my district, and the people in your district, then you don’t
5 have a right to take a position on all these other social issues. I think it’s beyond the realm of
6 your job description.” *Id.*

7 59. Other members of the public also spoke against the resolution adopted on April 8 and
8 in favor of the staff’s recommendation. One said, “A community service organization is of
9 course free to have religious beliefs but a county government is not free to endorse, show
10 preference, or recognize those specific religious beliefs.” *Id.* at 11. She concluded, “we have the
11 right to express our religious beliefs or no belief, but it should not be for the Board of
12 Supervisors to recognize the belief, only the service, of the organization.” *Id.*

13 60. Other members of the public spoke in favor of the original resolution. One stated he
14 “wanted to commend the Board on the original resolution,” and said “if this is an issue you want
15 to take a stand on, this’d be a good spot to take a stand on it.” *Id.* at 6. Another commented that
16 the original resolution “should stand. And too many times we allow outside influences to come
17 in and put you on the fence.” *Id.* at 8. She concluded, “I believe that it should stand and that you
18 guys should fight for it.” *Id.*

19 61. After public comment, Supervisor Spellman spoke again, saying “We have done
20 nothing wrong. Nothing illegal. Again people may not like that, but it’s life. Grow up you’re
21 adults and you need to realize that this is not a tyranny of the minority telling the majority what
22 they’re gonna do and what they can say.” *Id.* at 16. Supervisor Spellman stated that he believed
23 that the opposition to the resolution was based on discrimination against Christianity and that he
24 had contacted a legal organization that was willing to represent the County in any litigation
25 arising over the resolution without charge. *Id.* Supervisor Spellman then quoted from the New
26 Testament and continued, “Jesus is the light of the world. So beyond that I don’t want to get too
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1 religious for those people who have a, a tight stomach right now in the audience.” *Id.* He
2 concluded his remarks by stating “And I believe in God and Christ.” *Id.* at 17.

3 62. Supervisor Callaway then spoke, stating that, “if we have a new resolution, Mr.
4 Spellman wants to be part of it and it’s religion-neutral and it just talks about the work of the
5 Door of Hope. I’m open to doing that. I am not open to supporting anything in any way that is
6 written the way the resolution was on April, April eighth. So I want that very clear. The issues
7 in my mind are very clear. It was crossing the line between church and state. I have a diverse
8 constituency, many Christians, many non-Christians, and I represent them all.” *Id.* at 17.

9 63. After reading the original resolution, Supervisor Edson remarked, “we’re recognizing
10 the Door of Hope for the good works that they do and part of their process is a religious process
11 and part of their process is is it says that in the original resolution they seek to enlighten and
12 strengthen the lives of women and young women in Calaveras County by inviting them. Inviting
13 them to test and see for themselves the many blessing that can come from living the teachings of
14 Christ. They’re not telling them that they have to. They’re not telling them that they must,
15 they’re not saying that they’ll be kicked out if they don’t. They’re not, it just, they’re, it’s their
16 process.” *Id.* at 18.

17 64. Before the vote was called, Supervisor Wright suggested removing the phrase “by
18 inviting them to test and see for themselves the many blessings that can come from living the
19 teachings of Christ.” *Id.* at 22. He said, “We know this is a Christian organization, we’ve all,
20 we’ve all talked about that. But but it eliminates that that part that is the fundamental dividing
21 split in our community.” *Id.* He said, “We still leave in prayer I guess and unborn children and
22 those things.” *Id.*

23 65. Supervisor Wright then proposed expanding the resolution “to be all inclusive of
24 religions, not just the teachings of Christ.” *Id.* at 23.

25 66. The Door of Hope’s executive director, Ms. Hedrick, then said, “I have a lot of clients
26 who are of many other religions and we are open to their religions coming in. But we still teach
27 the teachings of Christ. That’s our example. That’s our process.” *Id.*

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1 67. After the lunch break, Supervisor Ponte announced that county staff had drafted an
2 alternative resolution to recognize the Door of Hope. Before proceeding with that item, she
3 asked for comments.

4 68. Supervisor Spellman commented first, asking that the resolution only be modified to
5 change the word “unborn” to “our most vulnerable children” and the phrase “the teachings of
6 Christ” to “according to God’s word,” thereby “specifically addressing those things that people
7 said that they had a problem with. ‘Unborn’ and ‘Christ.’” *Id.* at 25. When asked what he
8 thought about the new resolution drafted by county staff during the lunch break, he said, “it
9 looks very much like most documents you’d see that have been watered down to the point of
10 almost irrelevance.” *Id.*

11 69. Supervisor Ponte then read into the record the alternative resolution drafted by county
12 staff during the lunch break:

13 ““This is a resolution recognizing the Calaveras Door of Hope for serving the people of
14 Calaveras County and helping to save the lives of our most vulnerable children.’ I’m going to
15 skip the ‘whereas’es. ‘The mission of the Door of Hope is to bring practical, emotional and
16 spiritual assistance to women, men and children who face pregnancy-related issues. Calaveras
17 Door of Hope is part of a national network of pregnancy centers that share the common mission
18 of serving men, women and children in need. And Calaveras Door of Hope promotes many
19 values including providing a warm, safe environment for those in need, treating clients with
20 kindness and compassion, listening without judgment, keeping the confidence of clients,
21 offering ongoing support, counseling and provision of clothing and supplies to their clients.
22 Calaveras Door of Hope partners with community members who volunteer their time, financial
23 resources and prayers, supporting their clients with kindness and compassion while listening
24 without judgment. Through advocacy and education, the Door of Hope seeks to enlighten and
25 strengthen the lives of all throughout the county. The Board of Supervisors has a long history of
26 recognizing community organizations for the community services they provide to the residents
27 of Calaveras County by adopting non-binding recognition resolutions. The Board of Supervisors
28 desire to recognize the Door of Hope by this resolution for the support they provide the
residents of Calaveras County. Calaveras County Board of Supervisors recognizes the valiant
efforts made by members of and contributors to the Calaveras Door of Hope to enhance the
quality of life for women in our county and specifically those going through the very difficult
circumstances related to unplanned pregnancy.”

26 *Id.* at 26. She then opened the item to Board and public comments.

1 70. This proposed resolution maintained much of the text of the April 8 resolution but
2 omitted the reference to the many blessings that can come from living the teachings of Christ.

3 71. Several members of the public spoke against staff's new proposed resolution.

4 72. One said, "This is washed out, perfectly clean like the hands of Pontius Pilate when
5 he washed his hands before condemning Jesus. He didn't want the word Jesus Christ around
6 either." *Id.* at 27.

7 73. Ms. Hedrick, the executive director of the Door of Hope, said, "I thought that when
8 we walked back in here it was even going to have a mention of God. I don't see that. As Cliff
9 said earlier, it's our process. And obviously we don't have the right to our own process to be
10 recognized because everyone else has such strong opinions on agendas." *Id.* at 23.

11 74. Another member of the public said, "the resolution is fine the way it was. You
12 recognized an organization who helps in most part pregnant girls who need some guidance. And
13 they have a choice. The choices that they give 'em are to keep their child or to adopt it out. If
14 they want a different choice, they can go find that different choice somewhere else. There's no
15 reason to sugar -- or to hide all of what this group does. Most of the people in this community
16 are very pleased and happy to use the word God and Christian and Christ and all those things
17 because we truly believe in that because it's freedom to us. And not to have some other people
18 come around telling us we can't say those things because it offends me." *Id.* at 28.

19 75. Several members of the public spoke in favor of the staff's new proposed resolution.

20 76. Plaintiff Holly Mines commented, "I think that the staff made a terrific effort in just
21 one hour to rewrite what to me doesn't sound washed out at all. They use words like 'emotional'
22 and 'spiritual assistance.'" *Id.* at 28. She added, "This is what they do. And so everything which
23 has been expressed in the previous one, except the specific reference to Christian Christian the
24 practice of Jesus Christ has been included in my view." *Id.*

25 77. Another member of the public said, "It promotes the Door of Hope, and I thought that
26 was what the Door of Hope was looking for. Is recognition for the good works they do. Not for
27 promoting religion." *Id.* at 27. She added, "I do not consider it a watered down document." *Id.*

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1 78. Another member of the public said, “I want to say that I accept the rewritten
2 resolution here. Mainly because it brings praise to the Door of Hope. And that is what the
3 majority of supervisors were after in the first place. It was nice that they were trying to also
4 bring in our Lord Jesus and the process. But we’re not quite to the point of accepting that yet it
5 appears. Due to you know fear.” *Id.* at 28.

6 79. After public comment, Supervisor Spellman restated his two proposed revisions to the
7 original resolution. *Id.* at 31. He said, “People have a problem with the word ‘unborn,’ I
8 replaced that with ‘our most vulnerable children.’” *Id.* Also, he said, “So I addressed exactly
9 what people said they had a problem with. Which was endorsement of Christianity. I replaced
10 ‘teaching of Christ’ with ‘according to God’s word.’” *Id.* Supervisor Spellman previously
11 explained that in his view this change should address this problem because “Jewish people as
12 well as people who consider the Koran as their Holy Scripture and consider themselves to Islam
13 they believe in God, even agnostics believe in God, they just don’t believe in organized
14 religion.” *Id.* at 25. He concluded, “So, if it is that we adopt the vanilla resolution instead of this
15 one, where I’ve actually addressed exactly the concerns that were given, then it’s of my opinion
16 that this is a complete, frontal armored situation on anybody that believes in God not just
17 Christianity. Anybody that believes in God whether you’re a Jew, Islam, Muslim, whatever.” *Id.*
18 at 32.

19 80. Supervisor Spellman then made a motion to rescind the original resolution and adopt
20 his proposed resolution with these two changes. However, the motion failed for a lack of a
21 second. *Id.* at 34.

22 81. Supervisor Edson then proposed a new alternative resolution that would be identical
23 to the April 8 resolution except that it would omit the word “unborn.” *Id.* at 35.

24 82. Supervisor Edson made a motion to rescind the original resolution and adopt an
25 identical one omitting the word “unborn.” Supervisor Spellman seconded the motion. When
26 Supervisor Ponte called for a vote, the motion passed three to two, with Supervisors Edson,
27 Spellman and Ponte voting in favor and Supervisors Wright and Callaway voting against. A true
28

1 copy of Resolution Number 2014-100, rescinding Resolution Number 2014-035, is attached to
2 this complaint as Exhibit K. A true copy of Resolution Number 2014-101, recognizing the Door
3 of Hope, is attached to this complaint as Exhibit A.

- 4 83. That final July 8, 2014, Resolution reads as follows:
- 5 a. "WHEREAS, The Mission of Door of Hope is to bring compassionate help and
6 hope to women and teens who are unprepared for pregnancy; and
 - 7 b. WHEREAS, Calaveras Door of Hope is part of a national network of pregnancy
8 centers that share the common mission of ministering to women and men in need;
9 and
 - 10 c. WHEREAS, Calaveras Door of Hope endeavors to save the lives of children by
11 partnering with community members who volunteer their time, financial resources
12 and prayers supporting their clients with kindness and compassion while listening
13 without judgment; and
 - 14 d. WHEREAS, Through advocacy and education the Door of Hope seeks to enlighten
15 and strengthen the lives of women and young women in Calaveras County by
16 inviting them to test and see for themselves the many blessings that can come from
17 living the teachings of Christ.
 - 18 e. NOW THEREFORE BE IT RESOLVED, that the Calaveras County Board of
19 Supervisors recognizes the valiant efforts made by members of and contributors to
20 the Calaveras Door of Hope to enhance the quality for women in our county and
21 specifically those going through the very difficult circumstances related to
22 unplanned pregnancy.
 - 23 f. PASSED AND ADOPTED by the Board of Supervisors of the County of Calaveras,
24 State of California, this 8th day of July, 2014." Ex. A (paragraph lettering added).

25 84. The resolution was endorsed by the Clerk and filed with the County as Resolution
26 2014-101.

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1 85. There is an ongoing controversy between the parties: Plaintiffs believe that
2 Resolution 2014-101 violates the California Constitution. Defendant maintains that it does not.
3 Defendant has already passed two resolutions with the unconstitutional language, and without a
4 decision from this Court holding this language unconstitutional it will likely do so again. A
5 declaratory judgment will make it clear that the County may not lawfully enact a future
6 resolution with this same language; it will also communicate to the community that the County
7 cannot favor any religion over another, or over non-religion.

8 86. Plaintiffs are beneficially interested in the issuance of a writ. Plaintiffs are citizens
9 and taxpayers of Calaveras County who are personally affected by the resolution and who
10 additionally seek to vindicate the public interest in ensuring that Calaveras County comply with
11 the California Constitution.

12 87. The County expended taxpayer money, including money on staff salaries, to enact
13 and issue Resolution 2014-101. The County will continue to expend resources related to the
14 Resolution in the future, including resources needed to maintain records related to the
15 Resolution, as required by Government Code §§ 25101, 25102.1.

16 88. The Resolution is maintained on the Board of Supervisors' website,
17 [www.bos.calaverasgov.us/ClerkResources/DocumentArchives/tabid/835/FolderID/1656/Default](http://www.bos.calaverasgov.us/ClerkResources/DocumentArchives/tabid/835/FolderID/1656/Default.aspx)
18 [.aspx](http://www.bos.calaverasgov.us/ClerkResources/DocumentArchives/tabid/835/FolderID/1656/Default.aspx).

19 89. The County has a ministerial duty to comply with the California Constitution.

20 90. Plaintiffs have no plain, speedy or adequate remedy at law to compel the County to
21 perform its duty.

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FIRST CAUSE OF ACTION
All Plaintiffs against Defendant
Violation of California Constitution, Article I § 4

91. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set forth herein.

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92. Article I § 4 of the California Constitution provides, “The free exercise and enjoyment of religion without discrimination or preference are guaranteed,” and “The Legislature shall make no law respecting an establishment of religion.”

93. Defendants violate Article I § 4 of the California Constitution by adopting Resolution Number 2014-101.

SECOND CAUSE OF ACTION
All Plaintiffs against Defendant
Violation of California Constitution, Article XVI § 5

94. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set forth herein.

95. Article XVI § 5 prohibits any county from “mak[ing] an appropriation, or pay[ing] from any public fund whatever, or grant[ing] anything to or in aid of any religious sect, church, creed, or sectarian purpose.”

96. Defendant violates Article XVI § 5 by adopting Resolution Number 2014-101.

THIRD CAUSE OF ACTION
All Plaintiffs against Defendant
Taxpayer Action under Cal. Code of Civ. Proc. § 526a to
Prevent Illegal Expenditure of Funds

97. Plaintiffs incorporate by reference the allegations of the above paragraphs as though fully set forth herein.

98. Defendant has and continues to expend public funds by enacting Resolution Number 2014-101 and maintaining records of it in violation of the California Constitution.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

- A. Issue a declaration that Resolution Number 2014-101 violates Article I § 4 of the California Constitution and Article XVI § 5 of the California Constitution, in whole and in part.


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- B. Grant mandamus requiring Defendant to provide notice on or with all copies of the Resolution that Defendant distributes or makes publicly available that this Court has held that the Resolution is unconstitutional.
- C. Grant Plaintiffs their attorneys' fees and costs.
- D. Grant Plaintiffs such further relief as the Court deems just and proper.

Dated: February 13, 2015

Respectfully submitted,

Michael Temple Risher
Novella Y. Coleman
American Civil Liberties Union
Foundation of Northern California, Inc.

By: 
Novella Y. Coleman
Attorneys for Plaintiffs

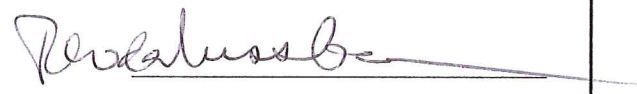
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VERIFICATION

I, Rhoda Nussbaum, have read this Verified Petition for Writ of Mandate and Complaint for Declaratory Relief in the matter of *Lavagetto v. Calaveras County*. I am informed, and do believe, that the matters herein are true. On that ground I allege that the matters stated herein are true. In addition, the facts within paragraphs 28 through 30 are within my own personal knowledge, and I know them to be true. I know the facts within paragraphs 36 through 48 to be true based on my review of the video of the Board's April 8, 2014, which is attached to this complaint as Exhibit F. I know the facts within paragraphs 56 through 84 to be true based on my memory of the meeting and my review of the video of the Board's July 8, 2014, which is attached to this complaint as Exhibits I and J.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 02/11/2015



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VERIFICATION

I, Shira J. Tevah, am a third-year law student at the University of California, Berkeley, School of Law (Boalt Hall), and a law clerk at the American Civil Liberties Union Foundation of Northern California. I have reviewed the videos of the Calaveras County Board of Supervisors meetings of April 8, 2014, and July 8, 2014, that are attached to this complaint as Exhibits F and I and J, respectively. I have also reviewed the transcripts of those meetings that are attached to this complaint as Exhibits G and K, respectively, and confirm to the best of my ability that the transcriptions are accurate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATED: 2/11/2015

