

Tax-Exempt Organization Complaint (Referral)

1. Name of referred organization

Fix the Court

Street address

348 4th Avenue, Suite 1007

City	State	ZIP code	Date of referral
Brooklyn	NY	11215	June 2, 2023

2. Organization's Employer Identification Number (EIN)

86-1840317

3. Nature of violation

- Directors/Officers/Persons are using income/assets for personal gain
- Organization is engaged in commercial, for-profit business activities
- Income/Assets are being used to support illegal or terrorist activities
- Organization is involved in a political campaign
- Organization is engaged in excessive lobbying activities
- Organization refused to disclose or provide a copy of Form 990
- Organization failed to report employment, income or excise tax liability properly
- Organization failed to file required federal tax returns and forms
- Organization engaged in deceptive or improper fundraising practices
- Other (*describe*)

4. Details of violation

Name(s) of person(s) involved

Gabe Roth, Joshua Cohen, Michelle Koppersmith, and Rebecca Rosenfeld

Organizational title(s)

Executive Director (Roth), Board President (Cohen), Board VP (Koppersmith), Board Secy and Treasurer (Rosenfeld)

Date(s)

March 1, 2022 - February 28, 2023

Dollar amount(s) (*if known*)

\$162,138

Description of activities

Fix the Court, through its Board of Directors, are paying its Executive Director Gabe Roth an unreasonable and excessive annual compensation of \$162,138 for 40 hours of work in 2022 in light of the fact its total revenue then was \$195,512 (83% of nonprofit income) and especially in light of the fact that it paid him \$79,746 in 2021 when revenue then was \$290,159 (27% of nonprofit income) for the same amount of hours.

Both Fix the Court and its Executive Director and Board Members are subject to an Excess Benefit Tax. See attached for further information.

5. Submitter information

Name

NATIONAL LEGAL AND POLICY CENTER

Occupation or business

NONPROFIT ETHICS WATCHDOG GROUP

Street address

107 PARK WASHINGTON COURT

City	State	ZIP code	Telephone number
FALLS CHURCH	VA	22046	703-237-1970

- I am concerned that I might face retaliation or retribution if my identity is disclosed

6. Submission and documentation: The completed form, along with any supporting documentation, may be mailed to IRS EO Classification, Mail Code 4910DAL, 1100 Commerce Street Dallas, TX 75242-1198, faxed to 214-413-5415 or emailed to eoclass@irs.gov. **Disclaimer Notice:** Your email submission of Form 13909 and attachments are not encrypted for security.

National Legal and Policy Center

"promoting ethics in public life"



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Michael Falcone

Richard F. LaMountain

David Wilkinson

Since 1991

June 2, 2023

Robert Malone
Director, Exempt Organizations Division
Internal Revenue Service
TEGE Referrals Group - MC 4910 DAL
1100 Commerce Street
Dallas, TX 75242
Via Email: eoclass@irs.gov

Re: Supporting Documentation to Form 13909: Tax-Exempt Organization Complaint
(Referral) Fix the Court, EIN 86-1840317

Dear Mr. Malone:

The National Legal and Policy Center (NLPC) hereby submits this supporting documentation for the attached Form 13909 Tax-Exempt Organization Complaint (Referral) regarding violations of IRS rules and regulations by Fix the Court, a registered 501(c)(3) tax exempt organization and Gabe Roth, its Executive Director, and Board Members Joshua Cohen, Michelle Kupper-Smith, and Rebecca Rosenfeld.

NLPC is a nonprofit 501(c)(3) ethics watchdog organization that has filed ethics complaints against public officials and organizations for failing to comply with relevant disclosure laws and related laws and regulations at the state and federal level.¹ This complaint is based in part on information regarding the activities of Fix the Court by investigative reporter Gabe Kaminsky in the *Washington Examiner* and information found in Fix the Court's Form 990s.²

¹ For information about NLPC's Government Integrity Project, see <https://www.nlpc.org/?s=government+integrity+project>. See also NLPC's IRS Complaint against the Disinformation Index, Inc., and the AN Foundation, the two U.S. affiliates of the U.K.-based Global Disinformation Index (filed May 4, 2023). <https://nlpc.org/featured-news/nlpc-files-irs-complaint-against-pro-censorship-group/>

² See Gabe Kaminsky, "Supreme Court 'transparency' group hammered by Judiciary GOP over IRS donor blunder" (May 18, 2023). <https://www.washingtonexaminer.com/policy/courts/judiciary-gop-rebukes-fix-the-court-after-leak>

Fix the Court Has Violated IRS Rules By Paying an Excessive Compensation to its Executive Director and Should Have its Tax-Exempt Status Revoked and/or its Executive Director and Board Members Subject to an Excess Benefit Tax

Nonprofit entities are prohibited from paying their officers and directors an unreasonable or excessive compensation. While the IRS has no fixed definition of what is an unreasonable compensation, the IRS looks at several factors to determine whether a nonprofit employee is being paid an excessive compensation, including the size of the organization, number of employees to supervise, and salaries paid to comparable nonprofits.³

In its 2022 Amended Form 990 return,⁴ Fix the Court reported paying its Executive Director Gabe Roth \$162,138 for working on average 40 hours per week.

See the instructions for the order in which to list the persons above.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/ 1099-MISC/ 1099-NEC)	(E) Reportable compensation from related organizations (W-2/ 1099-MISC/ 1099-NEC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) Joshua Cohen Board President	1.00			X				0	0	0
(2) Michelle Kuppersmith Board Vice President	1.00			X				0	0	0
(3) Rebecca Rosenfeld Board Secretary/Treasurer	1.00			X				0	0	0
(4) Gabe Roth Executive Director	40.00			X				162,138	0	0
(5)										
(6)										
(7)										

³ National Council of Nonprofits – Executive Compensation

<https://www.councilofnonprofits.org/running-nonprofit/governance-leadership/executive-compensation>; What is Reasonable Nonprofit Compensation? A Guide to Avoid IRS Penalties

<https://nonprofitquarterly.org/what-is-reasonable-nonprofit-compensation-a-guide-to-avoid-irs-penalties/> Do Nonprofit Employees Get Paid? A Guide to Nonprofit Salaries

<https://donorbox.org/nonprofit-blog/guide-to-nonprofit-salaries> (noting average pay for nonprofit executive director is \$47,000 to \$84,000)

⁴ Fix the Court’s 2021 and 2022 Form 990s can be found on its website.

<https://fixthecourt.com/about-us/>

While that amount may be reasonable to compensate an executive director for a large nonprofit with many employees and volunteers to supervise, the total charitable contributions received by Fix the Court for 2022 was only \$195,512 and it had only one employee, Gary Roth, and no volunteers. Thus, the salary of Gary Roth, its Executive Director, was a whopping 82 percent of the nonprofit's total revenue in 2022.

What is a reasonable compensation for an executive director of the size of Fix the Court? One need look no further than what Fix the Court paid Gabe Roth the year before. In 2021, Fix the Court reported that it paid Roth \$79,746 for working the same number of hours per week as he did in 2022:

See the instructions for the order in which to list the persons above.

Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee

(A) Name and title	(B) Average hours per week (list any hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)						(D) Reportable compensation from the organization (W-2/1099-MISC/1099-NEC)	(E) Reportable compensation from related organizations (W-2/1099-MISC/1099-NEC)	Estimate of comp from related or
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
(1) Joshua Cohen Board President	1.00			✓				0	0	
(2) Michelle Kuppersmith Board Vice President	1.00			✓				0	0	
(3) Rebecca Rosenfeld Board Secretary/Treasurer	1.00			✓				0	0	
(4) Gabe Roth (see Schedule O) Executive Director	40.00				X			79,746	0	
(5)										
(6)										

Thus, Gabe Roth's salary jumped from \$79,746 in 2021 to \$162,138 in 2022 which is **more than double** his compensation in 2021. While small salary increases due to inflation may be justified, there is no apparent reason why his salary was doubled.

Did Fix the Court have a large increase in donations in 2022 versus 2021 to justify the high compensation? Just the opposite. The amount of Fix the Court's revenue **decreased** in 2022 from \$290,159 in revenue in 2021 (when Roth's compensation at \$79,746 was 27% of nonprofit income) to \$195,512 in 2022 (when his compensation of \$162,138 was 83% of nonprofit income). Did Gabe Roth double his average hours per week from 2021 to 2022? No, it stayed the same at 40 hours per week.

Under IRS rules, that payment constitutes an Excessive Benefit Transaction (EBT) and the recipient must pay an excessive benefit tax of 25 percent. Moreover, other managers or

directors of the nonprofit who approved the payment are liable to personally pay a 10 percent tax. Not surprisingly, Fix the Court's Form 990 noted in Part VI, Section B, line 15, that it had **no** policy for **independent** persons to review and approve officer compensation. If it had, there may be a rebuttable presumption that the salary was reasonable. Instead, the non-independent Board of Directors approved this clearly unreasonable compensation, in which case there is a presumption that it was **not** reasonable.

Besides imposing an excess benefit tax on Executive Director Gabe Roth and Board Members Joshua Cohen, Michelle Koppersmith, and Rebecca Rosenfeld who approved the compensation, the IRS can and should revoke the tax-exempt status of Fix the Court for such unreasonable and excessive compensation to its executive director.

CONCLUSION

For all the foregoing reasons, the National Legal and Policy Center demands that the IRS fully investigate this complaint and take strong enforcement action against both the Fix the Court, assessing an excess benefit tax of its executive director and board members, and revoking its tax-exempt status. NLPC reserves the right to supplement this complaint as it obtains additional information about Fix the Court.

Respectfully submitted,



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Counsel to National Legal and Policy Center