

1 Alan Gura, Calif. Bar No. 178,221
2 Gura & Possessky, PLLC
3 105 Oronoco Street, Suite 305
4 Alexandria, VA 22314
5 703.835.9085/Fax 703.997.7665
6 alan@gurapossessky.com

7 Allen Dickerson*
8 Center for Competitive Politics
9 124 S. West St., Suite 201
10 Alexandria, VA 22314
11 703.894.6800/F: 703.894.6811
12 adickerson@campaignfreedom.org
13 *Application *pro hac vice* pending

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CENTER FOR COMPETITIVE) Case No. _____
POLITICS,)
Plaintiff,) COMPLAINT FOR
v.) DECLARATORY AND
KAMALA HARRIS, in her Official) INJUNCTIVE RELIEF
Capacity as Attorney General of the)
State of California,)
Defendant.)
_____)

INTRODUCTION

The First Amendment, and the Internal Revenue Code, protect the privacy of individuals who wish to support charitable educational organizations that seek to advance the public good. In derogation of these protections, California officials are pressuring Plaintiff Center for Competitive Politics (“CCP”), a § 501(c)(3) charitable organization, to reveal its confidences. CCP brings this action to secure its rights and those of its supporters.

JURISDICTION AND VENUE

1
2 1. This Court has subject matter jurisdiction over this action pursuant to
3 28 U.S.C. §§ 1331, 1343, 2201, 2202 and 42 U.S.C. § 1983.

4
5 2. Venue for this action is proper in the United States District Court for
6 the Eastern District of California per 28 U.S.C. § 1391(b).

7 PARTIES

8 3. Plaintiff Center for Competitive Politics (“CCP”) is a Virginia nonprofit
9 corporation, recognized by the Internal Revenue Service as a § 501(c)(3) educational
10 organization.

11 4. Defendant Kamala Harris is Attorney General of California, charged
12 with enforcement of California’s Uniform Supervision of Trustees for Charitable
13 Purposes Act, codified at Cal. Gov. Code § 12581 *et seq.* (2014).

14 STATEMENT OF FACTS

15
16 *California’s Registry of Charitable Trusts*

17 5. In order to legally solicit tax-deductible contributions in California, an
18 entity must be registered with the state’s Registry of Charitable Trusts (“Registry”).

19 6. The Registry is administered by California's Department of Justice.
20 Cal. Gov. Code § 12587.1 (2014).

21 7. To maintain membership in the Registry, nonprofit corporations must
22 file annual “periodic written reports” with the Attorney General, which “include the
23 Annual Registration Renewal Fee Report . . . as well as the Internal Revenue Service
24 Form 990, which must be filed on an annual basis with the Registry.” 11 Code of
25 Calif. Regs. § 301; § 306(c).
26
27
28

1 8. In previous years, Plaintiff has filed a periodic written report including
2 its Federal Form 990 but, pursuant to 26 U.S.C. § 6104(d)(3)(A), has redacted the
3 names and addresses of its contributors.

4 9. Plaintiff has been a member of the Registry since 2008.

5 10. On January 9, 2014, Plaintiff filed its Annual Registration Renewal Fee
6 Report with the Attorney General.

7 *Defendant Demands an Unredacted List of Plaintiff's Contributors*

8 11. Plaintiff received a letter from Defendant dated February 6, 2014
9 (“Letter”). A true and correct copy of the Letter is attached to this Complaint as
10 Exhibit 1.
11

12 12. The Letter acknowledges Defendant’s receipt of CCP’s periodic written
13 report, but states that “[t]he filing is incomplete because the copy of Schedule B,
14 Schedule of Contributors, does not include the names and addresses of contributors.”
15 (bold in original).
16

17 13. The Letter states that “[t]he Registry retains Schedule B as a
18 confidential record for IRS Form 990 and 990-EZ filers.”
19

20 14. The Letter concludes that Plaintiff must “[w]ithin 30 days of the date of
21 this letter . . . submit a complete copy of Schedule B, Schedule of Contributors, for
22 the fiscal year noted above, as filed with the Internal Revenue Service.” (bold,
23 underlining in original).

24 15. Thirty days from the date of the Letter is March 8, 2014, a Saturday.

25 16. The Letter further instructs Plaintiff to “address all correspondence to
26 the undersigned.”
27

1 17. The Letter is signed simply “A.B.,” which the signature block describes
2 as an “Office Technician, Registry of Charitable Trusts” writing on behalf of
3 Defendant.

4 *Consequences of Plaintiff's Failure to Reveal Its Supporters*

5 18. Under California law, “[t]he Attorney General may issue a cease and
6 desist order whenever the Attorney General finds that any entity . . . has committed
7 an act that would constitute a violation of . . . an order issued by the Attorney
8 General, including, but not limited to . . . fail[ure] to file a financial report, or [filing]
9 an incomplete financial report.” Cal. Gov. Code § 12591.1(b)(3) (2014).

10 19. After making such a finding, the Attorney General “may impose a
11 penalty on any person or entity, not to exceed one thousand dollars (\$1,000) per act
12 or omission.” Cal. Gov. Code § 12591.1(c).

13 20. “At least five days prior to imposing that penalty,” however, “the
14 Attorney General shall provide notice to the person or entity that committed the
15 violation by certified mail to the address of record at the Registry of Charitable
16 Trusts.” *Id.*

17 21. “Penalties shall accrue, commencing on the fifth day after notice is
18 given, at a rate of one hundred dollars (\$100) per day for each day until that person
19 or entity corrects that violation.” *Id.*

20 22. “If the Attorney General assesses penalties under this section, the
21 Attorney General may suspend the registration of that person or entity” in the
22 Registry. Cal. Gov. Code § 12591.1(d).

23 23. “Registration shall be automatically suspended until the fine is paid and
24 no registration shall be renewed until the fine is paid.” *Id.*

1 24. Absent registration, a nonprofit entity may not solicit contributions in
2 California, a state containing a substantial portion of the population and wealth of
3 the United States. Such a prohibition inhibits the ability of Californians to receive
4 solicitations from an entity that they would support, and thus the ability of
5 individuals, within and without the state, to associate.
6

7 25. Further, the “Attorney General may apply to a superior court of the
8 State of California for relief, and the court may issue a temporary injunction or a
9 permanent injunction to restrain violations of this chapter, appoint a receiver, order
10 restitution or an accounting, or grant other relief as may be appropriate to ensure
11 the due application of charitable funds. Those proceedings shall be brought in the
12 name of the state.” Cal. Gov. Code § 12591.1(f) (2014).
13

14 *Federal Law Protects the Names and Addresses of Plaintiff's Contributors*
15 *from Compelled Disclosure to State Officials*

16 26. The Internal Revenue Code regulates the disclosure of confidential
17 federal tax information, and is the sole authority governing such information.

18 27. The Code defines “[t]he term disclosure” as “the making known to any
19 person in any manner whatever a return or return information.” 26 U.S.C. §
20 6103(b)(8) (2014).

21 28. IRS Form 990, filed annually by § 501(c)(3) organizations including
22 Plaintiff, provides for the reporting of contributor names and addresses on Schedule
23 B, Schedule of Contributors.
24

25 29. The Schedule B filings of certain organizations, such as § 527 entities,
26 are made available for public inspection. 26 U.S.C. § 6104(d)(1).
27
28

1 30. Federal law, however, forbids public dissemination of complete
2 Schedule B information for organizations registered under § 501(c). § 6104(d)(3)(A)
3 (prohibiting “the disclosure of the name and address of any contributor to the
4 organization.”).

5
6 31. There is an exception to this blanket ban: upon the written request of a
7 state official, such as the Attorney General, “the [United States Treasury] Secretary
8 may make available for inspection or disclosure returns and return information of
9 any organization described in § 501(c) . . . for the purpose of, and only to the extent
10 necessary in, the administration of State laws regulating the solicitation or
11 administration of the charitable funds or charitable assets of such organizations.” 26
12 U.S.C. § 6104(c)(3).

13
14 32. Even this narrow exception is explicitly cabined: state officials are not
15 permitted to obtain the Schedule B of “organizations described in paragraph (1) or
16 (3)” of § 501(c). 26 U.S.C. § 6104(c)(3).

17 33. Consequently, Federal law specifically prohibits state officials,
18 including Defendant, from seeking or obtaining the unredacted Schedule B of
19 Plaintiff, a § 501(c)(3) organization.

20
21 *Associational Liberties and Compelled State Disclosure*

22 34. An undisturbed line of U.S. Supreme Court precedent expressly
23 prohibits state governments from obtaining the contributor lists of non-partisan,
24 nonprofit corporations. See, e.g., *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449
25 (1958); *Bates v. City of Little Rock*, 361 U.S. 516 (1960); *Gibson v. Fla. Legislative*
26 *Investigation Comm.*, 372 U.S. 539 (1963). The Court repeatedly held that disclosure
27 of such lists unconstitutionally burdens the freedom of association.
28

1 entities organized under § 501(c)(3) of the Internal Revenue Code. 26 U.S.C. §
2 6104(d)(3)(A).

3 42. The Attorney General's demand for the Schedule B filings of Plaintiff
4 CCP, a § 501(c)(3) organization, violates a duly enacted Federal statute and is thus
5 preempted by the Supremacy Clause, U.S. Const. art. VI, cl. 2, insofar as she seeks
6 to compel Plaintiff to turn over its contributors' names and addresses.
7

8 43. Plaintiff and its supporters have no adequate remedy at law to avert
9 the harm from Defendant's conduct. Plaintiff is entitled to a declaratory judgment
10 and injunctive relief prohibiting the Defendant from demanding its unredacted
11 Schedule B filings.
12

13 COUNT II – U.S. CONST. AMENDS. I, XIV

14 44. Plaintiff repeats, realleges, and incorporates the allegations in
15 paragraphs 1-43.

16 45. By compelling the disclosure of the names and addresses of Plaintiff's
17 contributors, Defendant will unlawfully and substantially deprive Plaintiff and its
18 supporters of the free association rights secured by the First Amendment to the
19 United States Constitution, in violation of 42 U.S.C. § 1983.
20

21 46. Plaintiff and its supporters have no adequate remedy at law to avert
22 this harm. Plaintiff is entitled to a declaratory judgment and injunctive relief
23 prohibiting the Defendant from demanding its Schedule B filings.
24

25 PRAYER FOR RELIEF

26 Wherefore, Plaintiff requests judgment be entered in its favor and against
27 Defendant as follows:
28

