

1 Alan Gura, Calif. Bar No. 178,221

2 Gura PLLC

3 916 Prince Street, Suite 107

4 Alexandria, VA 22314

5 703.835.9085/F: 703.997.7665

6 alan@gurapllc.com

7
8 Allen Dickerson*

9 Zac Morgan**

10 Center for Competitive Politics

11 124 S. West St., Suite 201

12 Alexandria, VA 22314

13 703.894.6800/F: 703.894.6811

14 adickerson@campaignfreedom.org

15
16 IN THE UNITED STATES DISTRICT COURT
17 FOR THE EASTERN DISTRICT OF CALIFORNIA

18
19 CENTER FOR COMPETITIVE)

20 POLITICS,)

21 Plaintiff,)

22 v.)

23 KAMALA HARRIS, in her official)

24 capacity as Attorney General of the)

25 State of California,)

26 Defendant.)

Case No. 14-636

FIRST AMENDED

COMPLAINT

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. Likewise, the Fourth Amendment secures papers and effects, including the papers of educational charities, against unreasonable seizure. Ignoring 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. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201, 2202, and 42 U.S.C. § 1983.
2. Venue for this action is proper in the United States District Court for the Eastern District of California per 28 U.S.C. § 1391(b).

PARTIES

1
2 3. Plaintiff Center for Competitive Politics (“CCP”) is a Virginia
3 nonprofit corporation, recognized by the Internal Revenue Service
4 as a § 501(c)(3) public charity.
5

6
7 4. Defendant Kamala Harris is Attorney General of California,
8 charged with enforcement of California’s Uniform Supervision of
9 Trustees for Charitable Purposes Act, codified at Cal. Gov. Code §
10 12581 *et seq.* (2016).
11

12 STATEMENT OF FACTS
13

14 *The Attorney General’s Schedule B Demand.*

15
16 5. In order to legally solicit contributions in California, an
17 organization raising charitable contributions must be registered
18 with the state’s Registry of Charitable Trusts (“Registry”).
19

20 6. The Registry is administered by California’s Department of Justice.
21 Cal. Gov. Code § 12587.1 (2014).
22

23 7. Plaintiff has been a member of the Registry since 2008.

24
25 8. To maintain membership in the Registry, nonprofit corporations
26 must file annual “periodic written reports” with the Attorney
27 General, which “include the Annual Registration Renewal Fee
28

1 Report . . . as well as the Internal Revenue Service Form 990, which
2 must be filed on an annual basis with the Registry.” 11 Code of Cal.
3 Regs. §§ 301, 306(c).
4

5 9. Absent registration, a covered nonprofit entity may not solicit
6 contributions in California, a state containing a substantial portion
7 of the population and wealth of the United States. Such a
8 prohibition inhibits charities’ ability to speak to Californians, and
9 Californians’ right to receive solicitations from entities that they
10 would support, and thus chills the association of individuals both
11 within and without the state.
12
13
14

15 10. In previous years, Plaintiff has filed a periodic written report
16 including its Federal Form 990, but, pursuant to 26 U.S.C.
17 § 6104(d)(3)(A), has redacted the names and addresses of its
18 contributors.
19
20

21 11. Upon information and belief, at some point in the year 2010,
22 the Attorney General commenced a policy of seeking unredacted
23 Schedule B information from Registry filers as a precondition to
24 membership in the Registry.
25
26
27
28

1 12. Upon information and belief, the Attorney General did not
2 announce this policy publicly, nor did the Attorney General
3 promulgate rules, regulations, or even instructions for filers, to
4 reflect this policy.
5

6 13. Upon information and belief, the Attorney General instead
7 chose to enforce this policy through the issuance of delinquency
8 letters, in cases where Registry staff noticed that charities filed a
9 redacted Schedule B.
10

11 14. It is unknown how many delinquency letters have been sent
12 pursuant to the Attorney General's unwritten policy.
13

14 15. Although the Attorney General's delinquency letters request
15 private information upon pain of administrative action, there is no
16 process for precompliance review of that demand.
17

18 16. It is unknown how many charities have been approved for
19 Registry membership, despite having filed only redacted copies of
20 Schedule B.
21

22 17. The Attorney General has insisted that she must have access
23 to the Schedule B information of all organizations soliciting
24
25
26
27
28

1 charitable funds from Californians because it is essential to her
2 responsibility to enforce the law.

3
4 18. Specifically, the Attorney General has explained that the
5 information aids her mission of enforcing California laws
6 prohibiting self-dealing, improper loans, interested persons, or
7 illegal or unfair business practices
8

9
10 19. However, upon information and belief, as of August 12, 2016,
11 information available on an unredacted Schedule B has never
12 served as the basis for initiating an investigation by the Attorney
13 General into whether a charity was in violation of California laws
14 against self-dealing, improper loans, interested persons, or illegal
15 or unfair business practices. *Am. for Prosperity Found. v. Harris*,
16 Case No. 14-9448 at 10 (C.D. Cal Apr. 21, 2016) (“*AFPF*”) (“The
17 record before the Court lacks even a single, concrete instance in
18 which the pre-investigation collection of a Schedule B did *anything*
19 to advance the Attorney General’s investigative, regulatory or
20 enforcement efforts”) (emphasis supplied).
21
22
23
24
25

26 20. Upon information and belief, as of August 12, 2016, the
27 Registry has never used a complete, unredacted copy of a Schedule
28

1 B belonging to any Registry member or Registry applicant in any
2 enforcement action for self-dealing, improper loans, interested
3 persons, or illegal or unfair business practices. *Id.*
4

5 21. On April 3, 2014, Kevis Foley—the Registrar of Charitable
6 Trusts—filed a sworn statement in this Court, describing the
7 Attorney General’s Schedule B program. Dkt. 10-8 (Foley Decl.).
8

9 22. Foley noted that “[a]s Registrar,” she was “responsible for
10 overseeing” the Registry’s “database of filings and information
11 related to entities which are registered or required to be registered.”
12
13 Foley Decl. at 2.
14

15 23. California law requires “reports filed with the Attorney
16 General” to “be open to public inspection.”¹ Cal. Gov. Code § 12590.
17

18 24. Although her position is contrary to statute, Foley declared
19 that “the Schedule B filed by public charities” with her office “has
20 always been treated as a confidential document. All confidential
21 documents are kept in separate files that are not available for
22 public viewing.” Foley Decl. at 2.
23
24
25

26
27 ¹ There is only one exception, where the “content is not exclusively for
28 charitable purposes.” Cal. Gov. Code § 12590. Since the reports at issue
here belong to a charitable organization, this exception does not apply.

1 25. Further, she declared that “[t]his process has been consistent
2 since 2007,” and that while “[t]he Registry publishes the non-
3 confidential documents on its searchable website, [it] maintains the
4 [S]chedule B records as confidential records, accessible to in-house
5 staff only.” *Id.* at 3.
6
7

8 26. Upon information and belief, Ms. Foley’s sworn statements to
9 this Court concerning the confidentiality of Schedule B information
10 were, and are, false. *AFPF* at 15-18. Subsequent to making that
11 sworn statement to this Court, Ms. Foley admitted in another U.S.
12 District Court that she was aware of numerous instances of failure
13 to maintain the confidentiality of this information. For example, in
14 December 2013, the Registry’s staff determined that the Schedule
15 B for the Beyond Baroque Foundation had mistakenly been posted
16 on the Registry’s public website. Similarly, in August 2014, the
17 Registry’s staff determined that the Schedule B for the Esalen
18 Institute had mistakenly been published on the Registry’s public
19 website. When a member of the Charitable Trusts Section contacted
20 Ms. Foley to ask whether the Esalen Institute’s Schedule B
21
22
23
24
25
26
27
28

1 “[s]hould . . . be public,” Ms. Foley confirmed that it should be
2 confidential and took it off the public website.

3
4 27. The United States District Court for Central District of
5 California has found, after trial, that at least 1,778 unredacted
6 Schedule B forms have been made available on the public Registry
7 Web site, including the “Schedule B for Planned Parenthood
8 Affiliates of California . . . which included all the names and
9 addresses of hundreds of donors.” *AFPF* at 16.
10
11

12 28. The amount of confidential Schedule B information still
13 available on the Registry’s public website is unknown. *Id.* at 16-17
14

15 29. Upon information and belief, no disciplinary action has been
16 taken, or is expected to be taken, against those responsible for the
17 release of this confidential information.
18
19

20 30. Upon information and belief, as of November 3, 2015, the
21 Registry did not have a programmer on staff capable of determining
22 whether or not unredacted Schedule B information was available
23 on the public Registry Web site.
24
25

26 31. Upon information and belief, the Attorney General’s recent
27 failure to safeguard the privacy of Schedule Bs filed with the
28

1 Registry occurred regularly throughout the period in which she
2 asserts she has required unredacted Schedule Bs, and this failure
3 to protect confidential information given to the Registry continues
4 to the present day. *AFPF* at 17 (finding a “pervasive, recurring
5 pattern of uncontained Schedule B disclosures—a pattern that has
6 persisted even during th[at] trial . . .”).
7
8

9
10 32. Before a sister court in this circuit, Ms. Foley testified under
11 oath “that separating out Schedule Bs and other confidential
12 materials from public filings is ‘very tedious, very boring work’ and
13 that ‘there is room for errors to be made’” in the separation of
14 private donor information from information made publicly
15 available. *AFPF* at 16.
16
17

18 33. Accordingly, Plaintiff reasonably fears that, whether or not
19 the Attorney General subjectively intends to maintain Schedule B
20 as a “confidential” document, the Registry is unable to attest that
21 its Schedule B information will in fact remain confidential.
22
23

24 34. Effective July 8, 2016, the Attorney General promulgated a
25 new regulation related to her Schedule B disclosure regime.
26
27
28

1 35. This new regulation amended 11 Code of Calif. Regs. § 310,
2 which governs the “public inspection of charitable trust records”,
3 and maintains that “reports filed with the Attorney General...shall
4 be open to public inspection.”
5

6 36. The new regulation posits that “[d]onor information exempt
7 from public inspection pursuant to” 26 U.S.C. § 6104(d)(3)(A), such
8 as Plaintiff’s donor list, “shall not be disclosed” by the Attorney
9 General “except...[i]n a court or administrative proceeding brought
10 pursuant to the Attorney General’s charitable trust enforcement
11 responsibilities” or “[i]n response to a search warrant.” 11 Code of
12 Calif. Regs. § 310(b).
13
14
15
16

17 37. This regulation, however, does not cure the underlying
18 problems amply identified by the United States District Court for
19 the Central District of California, and provides no more assurance
20 to Plaintiff than Ms. Foley’s initial declaration before this Court.
21
22

23 38. Upon information and belief, there remains no indication that
24 the Attorney General has taken concrete steps to ensure compliance
25 with 11 Code of Calif. Regs. § 310(b), such as adopting proper
26 security measures, training her staff in these measures, or
27
28

1 disciplining those responsible for previous breaches of the privacy
2 of donors in unredacted Schedule Bs, such as Planned Parenthood's,
3 entrusted to the Attorney General.
4

5 39. Nor does the regulation protect donor lists from becoming
6 public under the California Public Records Act. Cal. Gov. Code §
7 6254(k). As the Ninth Circuit observed last year, “[i]t is unclear
8 whether the Attorney General could avoid disclosing Schedule B
9 forms under” that law. *Am. for Prosperity Found. v. Harris*, 809
10 F.3d 536, 542 (9th Cir. 2015).
11
12
13

14 40. On January 9, 2014, Plaintiff filed its Annual Registration
15 Renewal Fee Report with the Attorney General. In keeping with its
16 usual practice, and having received no notice of a change in the
17 Attorney General's policy, Plaintiff did not provide a donor list to
18 her office.
19
20

21 41. On February 6, 2014, Plaintiff received a letter from
22 Defendant (“Demand Letter”). A true and correct copy of the Letter
23 is attached to this Complaint as Exhibit 1.
24
25

26 42. The Demand Letter acknowledged Defendant's receipt of
27 CCP's periodic written report, but averred that “[t]he filing is
28

1 **incomplete** because the copy of Schedule B, Schedule of
2 Contributors, does not include the names and addresses of
3 contributors.” (bold in original)
4

5 43. The Demand Letter ordered Plaintiff to “submit a **complete**
6 copy of Schedule B, Schedule of Contributors, for the fiscal year
7 noted above, as filed with the Internal Revenue Service . . . 30 days
8 of the date of this letter.” (bold, underlining in original)
9
10

11 44. On December 11, 2014, during the course of this litigation,
12 Plaintiff received a “Warning of Assessment of Penalties and Late
13 Fees, and Suspension and Revocation of Registered Status”
14 (“Warning Letter”) from Defendant. A true and correct copy of the
15 Warning Letter is attached as Exhibit 2.
16
17

18 45. This Warning Letter threatened actions that would be taken
19 by Defendant if CCP failed to comply with her demand for
20 Plaintiff’s unredacted Schedule B. *See* Cal. Gov. Code
21 § 12591.1(b)(3) (2014) (granting the Attorney General power to
22 issue cease-and-desist orders “whenever the Attorney General finds
23 that any entity . . . has committed an act that would constitute a
24 violation of . . . an order issued by the Attorney General, including,
25
26
27
28

1 but not limited to . . . fail[ure] to file a financial report, or [filing] an
2 incomplete financial report”); Cal. Gov. Code § 12591.1(c) (requiring
3 that Attorney General provide notice via certified mail at least five
4 days before imposing a penalty against a noncompliant charity).
5

6
7 46. First, the Warning Letter stated that “[t]he California
8 Franchise Tax Board will be notified to disallow the tax exemption
9 of” CCP, “at which point the organization will be treated as a
10 taxable corporation . . . and may be subject to the minimum tax
11 penalty.” Warning Letter at 1.
12
13

14 47. Second, the Warning Letter informed Plaintiff that “[l]ate fees
15 will be imposed by the Registry of Charitable Trusts for each month
16 or partial month for which the report(s) are delinquent. Directors,
17 trustees, officers and return preparers responsible for failure to
18 timely file these reports are **also personally liable** for payment of
19 all late fees.” *Id.* (bold in original); see Cal. Gov. Code § 12591.1(c)
20 (vesting Attorney General with power to “impose a penalty on any
21 person or entity” that she finds has failed to file a proper financial
22 report).
23
24
25
26
27
28

1 48. Third, the Warning Letter threatened that “the Attorney
2 General **will suspend the registration** of the above-named
3 entity.” *Id.* at 2 (bold in original); *see* Cal. Gov. Code § 12591.1(d)
4 (“If the Attorney General assesses penalties under this section, the
5 Attorney General may suspend the registration of that person or
6 Attorney General may suspend the registration of that person or
7 entity... Registration shall be automatically suspended until the
8 fine is paid and no registration shall be renewed until the fine is
9 paid”).
10
11

12 49. While not listed in the Warning Letter, California also
13 provides the Attorney General with power to “apply to a superior
14 court of the State of California for relief, and the court may issue a
15 temporary injunction or a permanent injunction to restrain
16 violations of this chapter, appoint a receiver, order restitution or an
17 accounting, or grant other relief as may be appropriate to ensure
18 the due application of charitable funds. Those proceedings shall be
19 brought in the name of the state.” Cal. Gov. Code § 12591.1(f)
20 (2014).
21
22
23
24
25

26 50. Plaintiff’s most recent filing of the Annual Registration
27 Renewal Fee Report was on December 11, 2015.
28

1 51. Presently lacking injunctive relief against the Attorney
2 General's demands, the Center for Competitive Politics has ceased
3 soliciting contributions within the state of California.
4

5 *The Attorney General's Demand for Schedule B Information Infringes*
6 *Upon the Freedom of Association.*

7 52. An undisturbed line of U.S. Supreme Court precedent protects
8 the privacy of contributors to non-partisan, nonprofit corporations
9 against invasion by state officials. *See, e.g., NAACP v. Alabama ex*
10 *rel. Patterson*, 357 U.S. 449 (1958); *Bates v. City of Little Rock*, 361
11 U.S. 516 (1960); *Gibson v. Fla. Legislative Investigation Comm.*, 372
12 U.S. 539 (1963).
13
14
15

16 53. The Supreme Court has repeatedly held that disclosure of
17 such lists unconstitutionally burdens the freedom of association. In
18 1958, a unanimous Court observed that “[i]t is hardly a novel
19 perception that compelled disclosure of affiliation with groups
20 engaged in advocacy may constitute [an] effective . . . restraint on
21 freedom of association.” *NAACP*, 357 U.S. at 462.
22
23
24

25 54. It is “immaterial whether the beliefs sought to be advanced by
26 association pertain to political, economic, religious or cultural
27 matters, and state action which may have the effect of curtailing
28

1 the freedom to associate is subject to the closest scrutiny.” *NAACP*,
2 357 U.S. at 460-461.

3
4 55. The Supreme Court has also blocked the use of state power to
5 obtain the names and addresses of contributors to a nonprofit
6 corporation in order “to determine whether petitioner was
7 conducting intrastate business in violation of the Alabama foreign
8 corporation registration statute” or as “an adjunct of their power to
9 corporation registration statute” or as “an adjunct of their power to
10 impose occupational license taxes.” *NAACP*, 357 U.S. at 464; *Bates*,
11 361 U.S. at 523.

12
13
14 56. Thus, for nearly 60 years, it has been settled that “regulatory
15 measures...no matter how sophisticated, cannot be employed in
16 purpose or in effect to stifle, penalize, or curb the exercise of First
17 Amendment rights.” *Louisiana ex rel. Gremillion v. NAACP*, 366
18 U.S. 293, 297 (1961).

19
20
21 57. If the Attorney General’s efforts are carried out, Plaintiff and
22 its supporters will suffer such an injury.

23
24 *The Attorney General’s Disclosure Scheme is a Content-Based*
25 *Restriction on Charitable Solicitation.*

26
27 58. “Content-based laws—those that target speech based upon its
28 communicative content—are presumptively unconstitutional and

1 may be justified only if the government proves that they are
2 narrowly tailored to serve compelling state interests.” *Reed v. Town*
3 *of Gilbert*, 135 S. Ct. 2218, 2227 (2015).
4

5 59. “Government regulation of speech is content based if a law
6 applies to particular speech because of the topic discussed or the
7 idea or message expressed” including where speech is regulated
8 based upon “its function or purpose . . .” *Reed*, 135 S. Ct. at 2227.
9
10

11 60. “Thus, a speech regulation targeted at specific subject matter
12 is content based even if it does not discriminate among viewpoints
13 within that subject matter.” *Id.* at 2230.
14

15 61. The Attorney General’s Schedule B demand is a precondition
16 for any person wishing to engage in the topic of charitable
17 solicitation—which is itself a form of First Amendment protected
18 speech. *Riley v. Nat’l Fed’n of the Blind*, 487 U.S. 781, 798 (applying
19 strict scrutiny to law restrictive of charitable solicitation); *Bd. of*
20 *Trs. of the State Univ. of N.Y. v. Fox*, 492 U.S. 469, 474 (1989)
21 (“conducting fundraising for charitable organizations...[is] fully
22 protected speech); *Gaudiya Vaishnava Soc’y v. San Francisco*, 952
23 F.2d 1059, 1063-1064 (9th Cir. 1991) (same).
24
25
26
27
28

1 62. The Attorney General’s content-based restriction on
2 Plaintiff’s charitable solicitation speech is not tailored to her
3 interest in the prevention and prosecution of charitable solicitation
4 fraud, and accordingly fails strict scrutiny.
5

6
7 *The Attorney General’s Dragnet Demand for Donor Information*
8 *Constitutes an Unconstitutional Search and Seizure and Violates the*
9 *Fourth Amendment.*

10 63. The Fourth Amendment requires a role for the judiciary in
11 supervising subpoenas and warrants. This protection is a vital
12 check on government power.
13

14 64. The Attorney General is empowered to conduct compliance
15 audits or subpoena donor information as part of an investigation
16 into violations of California law. These tools are available to her if
17 a charity’s annual filing demonstrates a particularized suspicion of
18 wrongdoing. *See* Cal. Gov. Code § 12588 (“[t]he Attorney General
19 may investigate transactions and relations of corporations and
20 trustees subject to this article...”).
21
22

23
24 65. Upon information and belief, the application of these
25 particularized approaches is sufficient to vindicate the Attorney
26 General’s law enforcement interests and is, in fact, the means by
27
28

1 which the Attorney General actually conducts her investigations,
2 rendering her asserted interest in obtaining CCP's Schedule B
3 illusory. *AFPF* at 10 ("The record before the Court lacks even a
4 single, concrete instance in which pre-investigation collection of a
5 Schedule B did anything to advance the Attorney General's
6
7
8 investigative, regulatory or enforcement efforts").

9
10 66. The Attorney General's disclosure mandate seeks private
11 donor information from all charities operating in California without
12 the judicial oversight that would exist if she, instead, issued
13 individual administrative subpoenas for select donor information.
14 *City of Los Angeles v. Patel*, 135 S. Ct. 2443, 2454 (2015) (noting the
15
16 existence of administrative subpoenas, and determining that
17 "[t]heir prevalence confirms what common sense alone would
18
19 otherwise lead us to conclude: In most contexts, business owners
20 can be afforded at least an opportunity to contest an administrative
21
22 search's propriety without unduly compromising the government's
23
24 ability to achieve its regulatory aims."); Cal. Gov. Code § 12589 (in
25
26 the context of an investigation, rather than a pre-investigation
27
28 dragnet, the Attorney General's administrative demands "shall

1 have the same force and effect as a subpoena and, upon application
2 of the Attorney General, obedience to the order may be enforced by
3 the Superior court [*sic*] in the county where the person receiving it
4 resides or is found, in the same manner as though the notice were
5 a subpoena. The court, after hearing, for cause, and upon
6 application of any person aggrieved by the order, shall have the
7 right to alter, amend, revise, suspend or postpone all or any part of
8 its provisions”).
9
10
11

12 67. The Attorney General’s dragnet regime, then, requires that
13 “absent...exigent circumstances”—none of which apply to
14 Plaintiff—the Attorney General “must...afford[]” the recipients of
15 her delinquency letters “an opportunity to obtain precompliance
16 review before a neutral decisionmaker.” *Patel*, 135 S. Ct. at 2452.
17
18
19

20 68. Because the Attorney General has not provided such an
21 opportunity, her demand infringes upon the Constitution’s
22 provision that Plaintiff “be secure in [its]...papers, and effects,
23 against unreasonable searches and seizures.” U.S. Const. amend.
24
25

26 IV.
27
28

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

1
2
3 69. The Internal Revenue Code regulates the disclosure of
4 confidential federal tax information, and it is the sole authority
5 governing such information.
6

7 70. The Code defines “[t]he term ‘disclosure’” as “the making
8 known to any person in any manner whatever a return or return
9 information.” 26 U.S.C. § 6103(b)(8) (2016).
10

11 71. All nonprofit organizations, including § 501(c)(3)
12 organizations, must annually file IRS Form 990.
13

14 72. IRS Form 990 provides for the reporting of contributor names
15 and addresses on Schedule B, Schedule of Contributors.
16

17 73. The IRS mandates that the Schedule B filings of certain
18 organizations, such as § 527 entities, available for public
19 inspection. 26 U.S.C. § 6104(d)(1).
20

21 74. Federal law, however, forbids public dissemination of
22 unredacted Schedule B information for organizations registered
23 under § 501(c). 26 U.S.C. § 6104(d)(3)(A) (protecting against “the
24 disclosure of the name and address of any contributor to the
25 organization.”).
26
27
28

1 75. There is an exception to this blanket ban: when requested by
2 a state official, such as the Attorney General, the IRS may disclose
3 “returns and return information of any organization described in
4 § 501(c) . . . for the purpose of, and only to the extent necessary in,
5 the administration of State laws regulating the solicitation or
6 administration of the charitable funds or charitable assets of such
7 organizations.” 26 U.S.C. § 6104(c)(3).
8
9
10

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

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

20 COUNT I – U.S. CONST AMENDS. I, XIV

21 78. Plaintiff repeats, realleges, and incorporates the allegations
22 in paragraphs 1-77.
23

24 79. By compelling the disclosure of the names and addresses of
25 Plaintiff's contributors, Defendant will unlawfully and
26 substantially deprive Plaintiff and its supporters of the free
27
28

1 association rights secured by the First Amendment to the United
2 States Constitution, in violation of 42 U.S.C. § 1983.

3
4 80. Moreover, by doing so as a predicate to Plaintiff's ability to
5 lawfully speak about a topic or subject matter—namely charitable
6 solicitation, Defendant will unlawfully and substantially deprive
7 Plaintiff of its free speech rights secured by the First Amendment
8 to the United States Constitution, in violation of 42 U.S.C. § 1983.
9
10

11 81. Despite her assurances to the contrary, including a sworn
12 statement by the then-Registrar of Charitable Trusts before this
13 Court, Defendant has been unable or unwilling to ensure that “the
14 [S]chedule B records a[re] confidential records, accessible to in-
15 house staff only.” Foley Decl. at 3.
16
17

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

24 83. Plaintiff is further entitled to nominal damages.
25

26 COUNT II – U.S. CONST. AMENDS. IV, XIV
27
28

1 84. Plaintiff repeats, realleges, and incorporates the allegations
2 in paragraphs 1-83.

3
4 85. By compelling the disclosure of the names and addresses of
5 Plaintiff's contributors with the force of a subpoena, but without
6 providing an opportunity for proper precompliance review,
7 Defendant will unlawfully and substantially deprive Plaintiff of its
8 Fourth Amendment protections against unreasonable searches and
9 seizures, in violation of 42 U.S.C. § 1983. *City of Los Angeles v.*
10 *Patel*, 135 S. Ct. 2443 (2015) (finding that lack of precompliance
11 review for an administrative subpoena violates the Fourth
12 Amendment).

13
14 86. Plaintiff has no adequate remedy at law to avert this harm.
15 Plaintiff is entitled to a declaratory judgment and injunctive relief
16 prohibiting the Defendant from demanding its Schedule B filings.

17 87. Plaintiff is further entitled to nominal damages.

18
19
20
21
22
23
24
25
26
27
28
COUNT III – FEDERAL PREEMPTION

88. Plaintiff repeats, realleges, and incorporates the allegations
in paragraphs 1-87.

1 89. Congress has, pursuant to its authority under U.S. Const. art.
2 I, sec. 8, barred state officials from demanding the names and
3 addresses of contributors to entities, like Plaintiff, organized under
4 § 501(c)(3) of the Internal Revenue Code. 26 U.S.C. § 6104(d)(3)(A).
5

6
7 90. The Attorney General's attempts to circumvent Congress's
8 express requirement that these forms go only to the IRS. This
9 violates a duly enacted Federal statute and is thus preempted by
10 the Supremacy Clause, U.S. Const. art. VI, cl. 2, insofar as she
11 seeks to compel Plaintiff to turn over its contributors' names and
12 addresses.
13
14

15
16 91. Plaintiff and its supporters have no adequate remedy at law
17 to avert the harm from Defendant's conduct. Plaintiff is entitled to
18 a declaratory judgment and injunctive relief prohibiting the
19 Defendant from demanding its unredacted Schedule B filings.
20

21 PRAYER FOR RELIEF
22

23 Wherefore, Plaintiff requests judgment be entered in its favor and
24 against Defendant as follows:
25

- 26 1. An order permanently enjoining Defendant, her officers, agents,
27 servants, employees, and all persons in active concert or
28

1 participation with them, from taking any action to enforce,
2 implement, or otherwise achieve the Attorney General's effort to
3 obtain the names and addresses of Plaintiff's contributors, as
4 described in paragraphs 5-51;
5

6
7 2. A judgment declaring that the Attorney General's effort, as
8 described in paragraphs 5-51, to obtain the names and addresses of
9 Plaintiff's contributors is preempted by the Supremacy Clause as a
10 violation of federal law and is null and void;
11

12
13 3. A judgment declaring that the Attorney General's effort to obtain
14 the names and addresses of Plaintiff's contributors, as described in
15 paragraphs 5-51, violates the First and Fourteenth Amendments
16 and is null and void;
17

18
19 4. A judgment declaring that the Attorney General's effort to obtain
20 the names and addresses of Plaintiff's contributors, as described in
21 paragraphs 5-51, violates the Fourth and Fourteenth Amendments
22 and is null and void;
23

24
25 5. An award to Plaintiff of its reasonable attorneys' fees and costs
26 under 42 U.S.C. § 1988;

27
28 6. An award of nominal damages; and

1 7. Granting Plaintiff such additional or different relief as the Court
2 deems just and proper.

3
4 Dated: August 12, 2016 Respectfully submitted,

5 By: /s/ Allen Dickerson

6
7 Allen Dickerson* Alan Gura, Cal. Bar No. 178,221
8 Zac Morgan** Gura PLLC
9 Center for Competitive Politics 916 Prince Street, Suite 107
10 124 S. West Street, Suite 201 Alexandria, VA 22314
11 Alexandria VA 22314 703.997.7665/F: 703.997.7665
12 703.894.6800/F: 703.894.6811 alan@gurapllc.com
13 adickerson@campaignfreedom.org

14 *Admitted *pro hac vice*.

15 **Application for admission *pro hac vice* pending
16
17
18
19
20
21
22
23
24
25
26
27
28