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UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

- - -
HONORABLE MANUEL L. REAL
UNITED STATES DISTRICT JUDGE PRESIDING
- - -

AMERICANS FOR PROSPERITY) CERTIFIED COPY
FOUNDATION,)
)
PLAINTIFF,) CV 14-9448 R
)
VS.)
)
KAMALA HARRIS,)
)
DEFENDANT.)
-----)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
MONDAY, FEBRUARY 17, 2015
A.M. SESSION
LOS ANGELES, CALIFORNIA

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APPEARANCES OF COUNSEL:

ON BEHALF OF PLAINTIFF:
QUINN EMANUEL
BY: HAROLD A. BARZA, ESQUIRE
DEREK SHAFFER, ESQUIRE
JONATHAN G. COOPER, ESQUIRE

ON BEHALF OF DEFENDANT:
OFFICE OF THE ATTORNEY GENERAL
BY: ALEXANDRA ROBERT GORDON,
DEPUTY ATTORNEY GENERAL
TAMAR PACHTER,
DEPUTY ATTORNEY GENERAL

1 LOS ANGELES, CALIFORNIA; MONDAY, FEBRUARY 17, 2015

2 A.M. SESSION

3 - - -

4
5 THE CLERK: Calling item No. 3,
6 CV-14-9448-R: Americans For Prosperity Foundation
7 versus Kamala Harris.

8 Counsel, please step forward and make your
9 appearances.

10 MR. BARZA: Good morning, Your Honor.

11 Harold Barza, of Quinn Emanuel, on behalf of
12 the plaintiff Americans For Prosperity.

13 This morning, our argument will be handled
14 by my partner --

15 THE COURT: Well, we haven't had the other
16 side yet. All right.

17 MR. BARZA: I apologize. Go ahead.

18 MS. GORDON: Good morning, Your Honor.

19 Alexandra Robert Gordon from the office of
20 the Attorney General, on behalf of defendant Attorney
21 General Kamala Harris.

22 MS. PACHTER: Good morning, Your Honor.

23 Tamar Pachter.

24 THE COURT: All right.

25 MR. BARZA: Thank you. Your Honor, this

1 morning my partner, Derek Shaffer, from our Washington
2 office will be arguing. And with us will also be
3 Jonathan Cooper from that office.

4 And we have here our clients, Victor
5 Bernson, the general counsel of our client, and Peter
6 Schalestock, the deputy general counsel.

7 THE COURT: All right. Counsel have
8 anything to add to the documents which have been filed
9 in this matter?

10 MR. BARZA: Your Honor, not unless the Court
11 has any questions about it.

12 THE COURT: I don't have any questions.
13 Anything to add?

14 MS. GORDON: No, Your Honor, not unless the
15 Court has questions for the defendant.

16 THE COURT: All right, then. In this
17 circuit there two interested -- inter-related legal
18 tests for the issuance of a preliminary injunction.
19 These tests are not separate, but rather represent the
20 outer reaches a single continuum.

21 At one end of the continuum, the moving
22 party is required to show both a probability of success
23 on the merits and possibility of irreparable injury.

24 At the other end of the continuum, the
25 moving party must demonstrate that serious legal

1 questions are raised and that the balance of hardship
2 tips so sharply in its favor. The relative hardship to
3 the parties is the critical element in deciding at which
4 point along the continuum a stay is justified.

5 In addition, in cases such as the one before
6 us, the public interest is a factor to be strongly
7 considered.

8 Lopez versus Heckler, 713 F.2d 1342 (Ninth
9 Circuit 1983).

10 Plaintiff Americans For Prosperity
11 Foundation seeks to enjoin defendant Kamala Harris, in
12 her official capacity as Attorney General of California,
13 from demanding or from taking any action to implement or
14 enforce her demand for the names and addresses of the
15 Foundation's donors, as contained in Schedule B to IRS
16 Form 990.

17 Defendant maintains that the preliminary
18 injunction test should not be reached because plaintiff
19 must first and has failed to -- to make a prima facie
20 showing of a First Amendment violation. Plaintiff
21 denies such a showing is necessary, but maintains that
22 in any case such a showing has been made here.

23 Instructive here is a related case, Center
24 For Competitive Politics versus Harris, No. 14-15978
25 (Ninth Circuit) herein after referred to as the CCP

1 case, a case in which a plaintiff -- plaintiff Center
2 also challenges the attorney general's demand for the
3 Schedule B of a 501(c)(3) charity on First Amendment and
4 preemption grounds.

5 The District Court in that case denied the
6 Center's motion for preliminary injunction, finding that
7 the plaintiff had failed to even attempt to make a prima
8 facie showing of a First Amendment violation.

9 C.C.P. 2014, WL 2002244, at paragraph 6 the
10 Eastern District of California May 14, 2014.

11 However, on January 6, 2015, the Ninth
12 Circuit issued an injunction pending appeal in C.C.P.
13 That injunction prohibits the attorney general from
14 taking any action against the Center For Competitive
15 Politics for failure to file an unredacted IRS Form 990
16 Schedule B, pending further order of this Court.

17 C.C.P. No. 14-5978, Docket 34, Ninth
18 Circuit, January 6, 2015.

19 The Ninth Circuit issued an injunction
20 following the attorney general's letter to that
21 plaintiff threatening to find the Center's employees and
22 suspend its registration if it did not hand over its
23 Schedule B. An almost identical letter was sent to
24 plaintiffs in this case.

25 In deciding whether to issue a stay pending

1 appeal the Court considers (1) whether the stay
2 applicant has made a strong showing that he is likely to
3 succeed on the merits, (2) whether the applicant will be
4 irreparably injured absent a stay, (3) whether issuance
5 of the stay will substantially injure the other parties
6 interested in the proceeding and, (4) where the public
7 interest lies. Humane Society of U.S. versus Gutierrez,
8 523 F.3d 990 (Ninth Circuit 2008). Thus, the
9 four-factor test for evaluating a preliminary injunction
10 pending appeal appears to be identical to that for a
11 preliminary injunction.

12 Assumably, then, because the Ninth Circuit
13 issued the preliminary injunction pending appeal despite
14 the Center's failure to even attempt to make a prima
15 facie showing of a First Amendment violation such
16 showing is not necessary. Defendant has not identified
17 any reason why the two cases are in -- are
18 distinguishable.

19 Moreover, defendant clearly believes one to
20 be instructive of the other, as she heavily relied on
21 the C.C.P. District Court opinion in her opposition.

22 Moreover, even if it were not the case,
23 plaintiff in this case has made -- has made such a
24 showing. The Court notes it may at this juncture
25 consider inadmissible evidence.

1 See, that is, Republic of the Philippines
2 verus Marcos, 862 F.2d 1355 (Ninth Circuit 1988)
3 (en banc).

4 Defendant's objections are therefore
5 overruled, and the Court considers the full record of
6 proffered evidence.

7 As explained in this Court's February 11,
8 2015, order, Plaintiff has proffered sufficient evidence
9 establishing that public disclosure would have a
10 chilling effect on free speech.

11 Additionally, plaintiff has made a prima
12 facie showing even if a Schedule B was only disclosed to
13 defendant because (1) defendant's policy to keep such
14 information confidential is not binding and might not
15 withstand legal challenge under Government Code section
16 12590, California's charity act public inspection law;
17 (2) defendant's policy is impermissibly entirely
18 discretionary and could change at any moment, See Doe
19 versus Harris, 772 F.3d 563; and (3) defendant has no
20 regulation regarding who has access to such information;
21 and (4) even if only defendant and the identified
22 individuals had access, plaintiff's doer -- donors who
23 have witnessed harassment of those perceived to be
24 connected with plaintiff's co-founders have experienced
25 their unwillingness to continue to participate if such

1 limited disclosure is made.

2 Accordingly, plaintiff has made a sufficient
3 prima facie showing of a First Amendment violation.

4 Regarding the substance of plaintiff's
5 request, plaintiff has raised serious questions going to
6 the merits and demonstrated that the balance of hardship
7 sharply favor plaintiff.

8 Again, the Ninth Circuit's issuance of an
9 injunction in the CCP case is instructive. Once any
10 necessary prima facie showing is made, the burden shifts
11 and a defendant must demonstrate the existence that both
12 a compelling state interest exists and a substantial
13 relationship between the information sought and that
14 overriding the compelling state interest.

15 Brown versus Socialist Workers '74 Campaign
16 Com. Ohio, 459 U.S. 87 (1982).

17 Plaintiff has sufficiently questioned the
18 nature of defendant's interest, noting it pertains to
19 national donor information, and the defendant lacks
20 expressive statutory authority to access such
21 information.

22 Moreover, even such interest was --
23 moreover, even such interest was compelling, plaintiff
24 has offered numerous less intrusive alternatives which
25 could satisfy defendant's oversight of law enforcement

1 goals, including (1) defendant could promulgate a formal
2 regulation exempting Schedule B from public disclosure
3 and limiting the uses of and access to donor
4 information, (2) defendant could limit her demands for
5 Schedule B to charities she chooses to audit perhaps
6 because they have engaged in fraudulent or illegal
7 activity, (3) defendant could require charities to
8 complete a new form answering questions to elicit,
9 quote, the fact that alternatives could advance the
10 government asserting a manner less intrusive to First
11 Amendment rights indicates that a law is more extensive
12 than necessary.

13 Thomas versus Western States Medical Center,
14 533 U.S. 357 (2002).

15 Finally, the balance of hardship sharply
16 favors plaintiff because defendant has not suffered harm
17 from not possessing plaintiff's Schedule B for the last
18 decade. The hardship plaintiff would face from
19 disclosure, however, is far greater and likely
20 irreparable.

21 When, as here, an ordinance infringes on
22 First Amendment rights of those seeking to express their
23 views, the balance of equities and the public interest
24 tip in favor of -- in favor of enjoining the ordinance.

25 Klein versus City of San Clemente, 584 F.3d

1 1196 (Ninth Circuit 2009).

2 For all these reasons, a preliminary
3 injunction is proper here where plaintiff has, at the
4 very least, raised serious questions as to the merits
5 and demonstrated that the balance of hardships and
6 public interest sharply favor -- favor plaintiff.

7 Accordingly, the Court declines to address
8 plaintiff's preemption arguments. Plaintiff's for
9 motion for preliminary injunction is therefore granted.

10 Petitioner to submit the order consistent
11 with this ruling.

12 That's it, gentlemen.

13 MR. BARZA: Thank you, Your Honor.

14 Thank you very much.

15 THE COURT: And ladies.

16 (PROCEEDINGS CONCLUDED.)

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CERTIFICATE OF REPORTER.

COUNTY OF LOS ANGELES)
) SS.
STATE OF CALIFORNIA)

I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR
THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT
TO SECTION 753, TITLE 28, UNITED STATES CODE, THE
FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE
STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE
ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE
FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: FEBRUARY 18, 2015

/s/ _____

SHERI S. KLEEGER, CSR
FEDERAL OFFICIAL COURT REPORTER

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