

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

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

**AMERICANS FOR PROSPERITY
FOUNDATION,**

Plaintiff,

vs.

KAMALA HARRIS,
in her Official Capacity as
Attorney General of California,

Defendant.

Case No. 2:14-cv-09448-R-FFM

**ORDER GRANTING MOTION FOR A
PRELIMINARY INJUNCTION**

1 Plaintiff Americans for Prosperity Foundation (“Foundation”) has applied for
2 a preliminary injunction order to prevent Defendant Kamala Harris, in her Official
3 Capacity as Attorney General of California, from demanding, or from taking any
4 action to implement or enforce her demand for, the names and addresses of the
5 Foundation’s donors, particularly as contained in Schedule B to IRS Form 990.

6 The current request is almost identical to one made in another case in this
7 Circuit, *Center for Competitive Politics v. Harris*, No. 14-15978 (9th Cir.)
8 (hereinafter referred to as the “CCP” case). The district court in that case denied
9 preliminary injunctive relief on the basis that a prima facie showing of a First
10 Amendment violation had not been attempted. *CCP*, 2014 WL 2002244, at *6 (E.D.
11 Cal. May 14, 2014). However, on January 6, 2015, the Ninth Circuit effectively
12 reversed the district court’s denial by issuing an injunction pending appeal in *CCP*.
13 That injunction prohibits the Attorney General from taking “any action against the
14 Center for Competitive Politics for failure to file an un-redacted IRS Form 990
15 Schedule B pending further order of this court.” *CCP*, No. 14-5978, Dkt. 34 (9th
16 Cir. Jan. 6, 2015). The Ninth Circuit issued such injunction following the Attorney
17 General’s letter to that plaintiff threatening to fine the Center’s employees and
18 suspend its registration if it did not hand over its Schedule B. An almost identical
19 letter was sent to Plaintiff in this case.

20 “A preliminary injunction should be issued upon a clear showing of either (1)
21 probable success on the merits and possible irreparable injury or (2) sufficiently
22 serious questions going to the merits to make them fair ground for litigation and a
23 balance of hardships tipping decidedly toward the party requesting the preliminary
24 relief.” *City of Angoon v. Marsh*, 749 F.2d 1413, 1415 (9th Cir. 1984). “These are

1 not really entirely separate tests, but are merely extremes of a single continuum. *Id.*
2 (relying on *Lopez v. Heckler*, 725 F.2d 1489, 1498 (9th Cir. 1984)). Because the
3 four factor test for evaluating a preliminary injunction pending appeal appears to be
4 identical to that for a preliminary injunction and no prima facie showing is
5 necessary, the Ninth Circuit’s issuance of injunctive relief in the *CCP* case is
6 instructive. *See Humane Soc’y of U.S. v. Gutierrez*, 523 F. 3d 990, 991 (9th Cir.
7 2008) (“In deciding whether to issue a stay pending appeal, the court considers ‘(1)
8 whether the stay applicant has made a strong showing that he is likely to succeed on
9 the merits; (2) whether the applicant will be irreparably injured absent a stay; (3)
10 whether issuance of the stay will substantially injure the other parties interested in
11 the proceeding; and (4) where the public interest lies.’”).

12 Once any necessary prima facie showing is made, the burden shifts and a
13 defendant must demonstrate the existence of both a “compelling” state interest
14 exists and “a substantial relationship between the information sought and [that]
15 overriding and compelling state interest.” *Brown v. Socialist Workers ’74 Campaign*
16 *Comm. (Ohio)*, 459 U.S. 87, 92 (1982). Plaintiff has raised serious questions going
17 to the merits and demonstrated that the balance of hardships sharply favor Plaintiff.

18 Plaintiff has sufficiently questioned the nature of Defendant’s interest, noting
19 it pertains to national donor information and that Defendant lacks express statutory
20 authority to access such information. Moreover, even if such interest was
21 compelling, Plaintiff has offered numerous, less intrusive alternatives which could
22 satisfy Defendant’s oversight and law enforcement goals. “The fact that . . .
23 alternatives ‘could advance the Government's asserted interest in a manner less
24 intrusive to . . . First Amendment rights’ indicate[s] that [a] law [i]s ‘more extensive

1 than necessary.” *Thompson v. Western States Med. Ctr.*, 533 U.S. 357, 357 (2002)
2 (relying on *Central Hudson Gas & Electric Corp. v. Public Serv. Comm’n of New*
3 *York*, 447 U.S. 557, 566 (1980)).

4 Finally, the balance of the hardships sharply favors Plaintiff because
5 Defendant has not suffered harm from not possessing Plaintiff’s Schedule B for the
6 last decade. The hardship Plaintiff would face from disclosure, however, is far
7 greater and likely irreparable. When, as here, an ordinance infringes on First
8 Amendment rights of those “seeking to express their views” the “balance of equities
9 and the public interest . . . tip sharply in favor of enjoining the ordinance.” *Klein v.*
10 *City of San Clemente*, 584 F.3d 1196, 1208 (9th Cir. 2009).

11 Accordingly, having considered the application and supporting papers, and
12 following a hearing on February 17, 2015:

13 **IT IS HEREBY ORDERED** that the Attorney General is preliminarily
14 enjoined from demanding, and/or from taking any action to implement or to enforce
15 her demand for, a copy of the Foundation’s Schedule B to IRS Form 990 or any
16 other document that would disclose the names and addresses of the Foundation’s
17 donors, until this Court issues a final judgment.

18 **IT IS SO ORDERED.**

19 DATED: February 23, 2015

20 
21 By _____

22 Hon. Manuel L. Real
23 United States District Judge
24