

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>LIBERTY JUSTICE CENTER,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>LETITIA JAMES, as attorney general of the State of New York, Defendant.</p>	<p style="text-align: center;">No.</p> <p style="text-align: center;">COMPLAINT</p>
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INTRODUCTION

1. The First Amendment grants individuals who donate to nonprofit organizations the right to associate privately lest public disfavor and harassment chill their speech. On July, 2021, the U.S. Supreme Court confirmed this right by ruling in favor of a facial challenge to the California Attorney General’s policy of requiring all charities registered with the state to submit their complete IRS Form 990, including the confidential Schedule B that lists an organization’s major supporters. *Americans for Prosperity Found. v. Bonta*, Nos. 19-251 & 19-255, 2021 U.S. LEXIS 3569 (July 1, 2021). As of July 1, 2021, California no longer collects the Schedule B of nonprofit organizations wishing to operate in the state.¹

2. Defendant Attorney General James has the same policy as California of requiring nonprofit organizations to submit their Schedule B as part of their annual charitable registration.

¹ See <https://oag.ca.gov/charities>.

3. New York has already acknowledged in court filings that it has a policy that is “the same or similar” to the policy struck down as facially unconstitutional in *AFPP v. Bonta*. In that case, General James for the State of New York authored an amicus brief which said, “At issue in this case is California’s requirement that every charity operating within the State provide its Schedule B along with its Form 990 as part of the total package of financial and other information that must be reported to the State. Several other States have the same or a similar reporting requirement. New York requires charities that receive more than \$25,000 annually from New York residents and entities to register and file an annual report with the Attorney General that includes ‘a copy of the complete IRS form 990, 990-EZ or 990-PF with schedules’ including Schedule B. 13 N.Y.C.R.R. § 91.5(c)(3).” Br. for States of New York, Colorado, Connecticut, Hawai’i, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, and Virginia, and The District of Columbia as Amici Curiae, pg. 9, *Americans for Prosperity Found.*, Nos. 19-251 & 19-255, 2021 U.S. LEXIS 3569 (July 1, 2021).

4. Plaintiff Justice Liberty Center (“Center”) is a nonprofit public-interest law firm that litigates on behalf of the constitutional rights of American families, workers, advocates and entrepreneurs. It zealously guards the confidentiality of its donors to ensure their privacy. The Center fundraises nationally, and just became registered as a charity in New York.

5. Forced to choose between continuing its charitable registration and the irreparable loss of First Amendment freedom, the Center brings this case to protect its rights.

PARTIES

6. Plaintiff Liberty Justice Center is an Illinois nonprofit corporation headquartered in Chicago, Illinois. The Center's president works out of an office located at 208 S. LaSalle Street, Suite 1690, Chicago, Illinois 60604. The Center is devoted to the promotion of limited government and the protection of individual liberties through litigation in courts nationwide. To that end, the Center represents clients, at no cost to them, in lawsuits challenging government overreach throughout the states. The Center funds its activities by raising charitable contributions from donors throughout the country, including in New York.

7. Defendant Letitia James is the New York Attorney General. In this capacity, she oversees the Charities Bureau. She maintains an executive office in the Southern District at 28 Liberty Street, New York, NY 10005.

JURISDICTION & VENUE

8. This Court has jurisdiction under 28 U.S.C. §§ 1331, 1343, because this is an action to vindicate constitutional civil rights under 42 U.S.C. § 1983.

9. Venue in this Court is proper under 28 U.S.C. § 1391(b).

FACTS

10. The Internal Revenue Service ("IRS") recognizes the Center as a 501(c)(3) nonprofit charity. Such charities are exempt from federal income taxes but

must file an annual tax return (a “Form 990 Schedule A”).² Certain charities—including the Center—must also file a Form 990 Schedule B, which lists the name and address of every individual nationwide who donated more than \$5,000 to the charity during a given tax year.³

11. Once filed, a nonprofit organization’s federal tax return must be “made available to the public,” except for the “name or address of any contributor” to the organization. 26 U.S.C. § 6104(b), (d)(3)(A). Form 990’s are thus public, but Schedule B’s listing donor names and addresses are not. Indeed, unauthorized disclosure of Schedule B can result in civil or criminal penalties. 26 U.S.C. §§ 7213, 7431.

12. State officials who administer state laws regulating charities can—like any member of the public—obtain a charity’s Form 990 Schedule A. The tax code further provides that state regulators of charities can obtain from the IRS the *nonpublic* tax returns (including a Schedule B) of *certain* nonprofits, but *not* of 501(c)(3) organizations. § 6104(c)(3).

13. Charitable organizations that intend to solicit in the state of New York are required by law to initially register with Defendant General James, whose office includes the charities bureau. N.Y. Exec. Law § 172(1). The appropriate form is CHAR410.

² See IRS Form 990, available at <http://www.irs.gov/pub/irs-pdf/f990.pdf>.

³ See IRS Schedule B to Form 990, available at <http://www.irs.gov/pub/irs-pdf/f990ezb.pdf>.

14. Charities which have gross revenue above \$1,000,000 are also required to file an annual report with Defendant General James, CHAR500. N.Y. Exec. Law § 172-b(1).

15. As part of her annual registration requirements for charities, Defendant General James (through the Charities Bureau) requires registrants submit their complete IRS Form 990. N.Y. Comp. Codes R. & Regs. tit. 13, § 91.5(c)(3)(i). The Charities Bureau confirmed this requirement includes the Schedule B in a memorandum issued in November 2019.⁴

16. Defendant General James acts under color of state law when she makes and enforces these regulations and policies.

17. Liberty Justice Center plans to fundraise in the state of New York to support its mission. As a result, it has recently registered for charitable status with the Defendant, and has been assigned New York State Regulatory Number 47-67-71.

18. Liberty Justice Center has annual gross revenue in excess of \$1,000,000.

19. As a result, Liberty Justice Center is required to complete the annual registration statement required by Defendant General James, and must attach its complete IRS Form 990, including Schedule B.

⁴ See “ORGANIZATIONS REGISTERED WITH THE CHARITIES BUREAU MUST FILE COMPLETE SCHEDULE B TO IRS FORM 990, INCLUDING NAMES AND ADDRESSES OF CONTRIBUTORS,” available at <https://www.charitiesnys.com/pdfs/guidance-schedule-b.pdf>.

20. Because it is a new registrant, Liberty Justice Center has not yet had to turn over its Schedule B to New York (it is not required as part of Form CHAR410, for new registrants), but it will be forced to do so when it must complete its first annual renewal, currently due November 15, 2021.

21. If the Center fails to comply with the annual renewal requirement, Defendant General James may revoke its registration, which would prevent it from fundraising in New York. She may also levy a fine of \$1,000 and an additional \$100 per day until the Center complies. N.Y. Exec. Law § 177 (2)(a-b).

22. The cancellation of its charitable registration in New York would injure the Center by preventing it from fundraising in the state.

23. Liberty Justice Center zealously safeguards the privacy of its donors. It has in place policies and procedures for its staff, interns, and contractors to ensure this privacy.

24. Liberty Justice Center litigates a number of controversial topics, including cases on behalf of worker freedom against unions, on behalf of parents against curricula associated with critical race theory, and on behalf of victims of cancel culture.

COUNT I – FIRST AMENDMENT

25. The Center repeats, realleges, and incorporates all the allegations above.

26. The First Amendment to the United States Constitution applies to New York by virtue of the Fourteenth Amendment. Officials of the State of New

York who act under color of state law to violate the First Amendment rights of citizens and organizations violate 42 U.S.C. 1983.

27. The First Amendment creates a “right to associate for the purpose of speaking.” *Rumsfield v. FAIR*, 547 U.S. 47, 68 (2006).

28. To vindicate this right, the Supreme Court has “held laws unconstitutional that require the disclosure of membership lists for groups seeking anonymity.” *Id.* at 69. Such laws “ma[k]e group membership less attractive” and violate the First Amendment by “affecting the group’s ability to express its message.” *Id.*

29. “It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on freedom of association.” *Bates v. City of Little Rock*, 361 U.S. 516, 523 (1960).

30. Anonymous speech is not only accepted but celebrated within American politics. As “famously embodied in the Federalist Papers,” which were published under the pseudonym “Publius,” there is a long and “respected tradition of anonymity in the advocacy of political causes” in this country. *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 343 & n.6 (1995). For government to take the opposite approach by “[c]ompell[ing] disclosure of membership in an organization engaged in advocacy of particular beliefs” is akin to it ““requir[ing] that adherents of particular religious faiths or political parties wear identifying arm-bands.”” *NAACP v. State of Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) (quoting *American Communications Ass’n v. Douds*, 339 U.S. 382, 402 (1950)).

31. Nor is it any less noxious to compel disclosure of an organization's *donors* than it is to compel disclosure of its *members*: the Supreme Court has “not drawn fine lines between contributors and members,” but has instead “treated them interchangeably.” *Buckley v. Valeo*, 424 U.S. 1, 66 (1976).

32. The Supreme Court recently held that demanding charitable organizations to disclose to a state attorney general the contents of their Schedule B violates the First Amendment. *Americans for Prosperity Found. v. Bonta*, Nos. 19-251 & 19-255, 2021 U.S. LEXIS 3569 (July 1, 2021). Such a disclosure requirement “imposes a widespread burden on donors’ associational rights.” *Id.* at *33. The burdens imposed by a blanket demand cannot be justified because such a demand is not narrowly tailored to any important governmental interest. *Id.* at *24–27.

33. In *Americans for Prosperity Foundation*, the Court ruled in favor of a facial challenge by charities to California’s requirement that charities provide their Schedule B to the Attorney General’s bureau of charities, finding that rule was not narrowly tailored to the state’s interest in preventing charitable fraud. The Court further found that disclosure only to a government agency, even if that agency pledges to keep it confidential, constitutes a real burden on associational rights.

34. Defendant General James’s policy, on pain of penalty, requiring the disclosure of the names and addresses of the Center’s contributors to her infringes the rights to freedom of speech and freedom of association of the Center and its supporters, which rights are secured by the First and Fourteenth Amendments, in violation of 42 U.S.C. § 1983. The Attorney General’s demand for a charity’s donor

information on Schedule B is unconstitutional both on its face and as applied to the Center.

35. The Attorney General's demand gives the Center two choices: either it must disclose its donor list, which could chill its speech and the speech of its donors, or else it must bear the penalties of noncompliance with New York's demand, which will chill its fundraising speech. "[F]und-raising for charitable organizations is fully protected speech." *Gaudiya Vaishnava Society v. City and County of San Francisco*, 952 F.2d 1059, 1063 (9th Cir. 1990); accord *Riley v. National Federation of the Blind of North Carolina, Inc.*, 487 U.S. 781, 789 (1988); *Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 632 (1980).

PRAYER FOR RELIEF

Wherefore, the Center requests judgment in its favor and against the Attorney General as follows:

1. An order enjoining the Attorney General from demanding the Center's Schedule B that contains its donor information or from taking any action to implement or enforce her policy demanding the Center's Schedule B.
2. A declaration that the Attorney General's demand for a copy of the Center's Schedule B containing the names and addresses of the Center's donors violates the First and Fourteenth Amendments both on its face and as applied to the Center, and is therefore null and void.
3. Nominal damages.
4. An award to the Center of its reasonable attorneys' fees and costs.

5. A grant to the Center of such additional or alternative relief as the Court deems just and proper.

Dated: Rochester, New York
July 14, 2021

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