

1 Bryan K. Weir, CA Bar #310964
2 Thomas R. McCarthy*
3 William S. Consovoy*
4 Cameron T. Norris*
5 CONSOVOY MCCARTHY PLLC
6 1600 Wilson Boulevard, Suite 700
7 Arlington, VA 22209
8 (703) 243-9423

9 *Application for admission
10 pro hac vice forthcoming

11 UNITED STATES DISTRICT COURT
12 EASTERN DISTRICT OF CALIFORNIA

13 DONALD J. TRUMP FOR PRESIDENT,
14 INC., DONALD J. TRUMP, in his
15 capacity as a private citizen,

16 Plaintiffs,

17 v.

18 ALEX PADILLA, in his official capacity
19 as California Secretary of State, and
20 XAVIER BECERRA, in his official
21 capacity as California Attorney General,

22 Defendants.

No.

**COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

23 Plaintiffs Donald J. Trump for President, Inc. and Donald J. Trump, in his capacity as a
24 private citizen, bring this action against Defendants Alex Padilla, in his official capacity as
25 Secretary of State of California, and Xavier Becerra, in his official capacity as Attorney General of
26 California, to have California’s Presidential Tax Transparency and Accountability Act declared
27 unconstitutional and to enjoin its enforcement. Plaintiffs allege as follows:

INTRODUCTION

28 1. The Constitution sets forth the qualifications for the President, Vice President,
Senate, and House of Representatives. The Supreme Court has held that those qualifications are
“exclusive” and that States do not have the power to “supplement” them with their own

1 requirements. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

2 2. Likewise, the First Amendment (as applied against the States through the Fourteenth
3 Amendment) limits what restrictions States can place on candidates seeking to be put on the ballot.
4 Though States may exercise some control over elections, they cannot do so in a way that burdens
5 a candidate's First Amendment rights. *See, e.g., Anderson v. Celebrezze*, 460 U.S. 780, 794 n.18
6 (1983). And such restrictions must "regulate[] the procedural aspects of the election" or "require[]
7 some initial showing of support." *Schaefer v. Townsend*, 215 F.3d 1031, 1038 (9th Cir. 2000). Any
8 other restrictions violate the First Amendment.

9 3. The First Amendment also bars States from passing laws to retaliate against an
10 individual for his or her political associations or speech. States cannot pass legislation "when the
11 specific motivating ideology or the opinion or perspective of the speaker is the rationale."
12 *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995).

13 4. The Ethics in Government Act ("EIGA") requires presidential candidates to disclose
14 extensive personal financial information, 5 U.S.C. App. 4 §§ 101(a); 5 U.S.C. App. 4 § 102, and
15 expressly displaces all other similar federal or state disclosure laws. Specifically, it supersedes "any
16 other provision of law or regulation with respect to the reporting of information required for
17 purposes of preventing conflicts of interest or apparent conflicts of interest." 5 U.S.C. App. 4 §
18 107(b).

19 5. The Democratic Party is on a crusade to obtain the President's federal tax returns in
20 the hopes of finding something they can use to harm him politically. In their rush to join this
21 crusade, California Democrats have run afoul of these restrictions on State power over federal
22 elections.

23 6. On July 30, 2019, California Governor Gavin Newsom signed into law the
24 Presidential Tax Transparency and Accountability Act, also known as SB27. That law requires all
25 candidates for President to disclose their previous five years of tax returns as a condition of
26 appearing on a primary ballot. In passing the law, Governor Newsom and the Democrats in the
27 California legislature who voted for it made clear that they were retaliating against President Trump
28 for his political associations and speech.

1 7. Because SB27 adds an unconstitutional qualification to the fixed set of
2 qualifications for the presidency in the Constitution, violates the First Amendment, and is
3 preempted by the EIGA, the Court should enjoin its enforcement.

4 **JURISDICTION AND VENUE**

5 8. This Court has subject matter jurisdiction because this action arises under the
6 Constitution and laws of the United States, 28 U.S.C. § 1331, and alleges civil-rights violations, *id.*
7 § 1343.

8 9. Venue is proper because a substantial part of the events or omissions giving rise to
9 the claims occurred in this District, and the Defendants reside in this District. *Id.* § 1391.

10 **PARTIES**

11 10. Plaintiff Donald J. Trump for President, Inc. is the principal committee for President
12 Donald J. Trump's reelection campaign.

13 11. Plaintiff Donald J. Trump is the 45th President of the United States. He is a member
14 of the Republican Party and will be seeking the Republican nomination for President in 2020.
15 President Trump brings this suit in his capacity as a private citizen.

16 12. Defendant Alex Padilla is the Secretary of State of California. Defendant Padilla is
17 the State of California's chief elections officer and oversees all elections within California. His job
18 includes ensuring that all election laws and campaign disclosure requirements are enforced,
19 certifying the official lists of candidates for elections, and certifying election results. He is sued in
20 his official capacity.

21 13. Defendant Xavier Becerra is the Attorney General of California. Defendant Becerra
22 is charged with the duty to see that the laws of California are uniformly and adequately enforced.
23 He is sued in his official capacity.

BACKGROUND

I. Federal Law Sets Important Limitations on States’ Ability to Legislate in the Arena of Federal Elections.

A. Under the Qualifications Clauses, States cannot impose their own qualifications for federal office.

14. The Constitution sets forth the qualifications for the presidency in Article II, § 1, cl. 5. It provides: “No Person except a natural born Citizen ... shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.” A similar provision sets the qualifications for serving in Congress. *See* U.S. Const. art. I, § 2, cl. 2; Article I, § 3, cl. 3.

15. The Supreme Court has held that these are the *exclusive* qualifications for federal office. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995). That is, the qualifications set forth in Article II are fixed; States do not “possess the power to supplement the exclusive qualifications set forth in the text of the Constitution.” *Id.* at 827. A State’s laws violate the Qualifications Clauses if they impose a “substantive qualification rendering a class of potential candidates ineligible for ballot position.” *Id.* at 835.

16. To be sure, States have some power to set basic procedural requirements for federal elections. But States cannot rely on that power to “dress eligibility ... in ballot access clothing” and render the Qualifications Clauses “empty formalism.” *U.S. Term Limits*, 514 U.S. at 831.

B. Under the First and Fourteenth Amendments, States cannot impose ballot access rules that infringe a candidate’s freedom of political association.

17. With respect to federal elections, States may only “issue procedural regulations,” which includes the power to regulate the place and manner of elections. *Cook v. Gralike*, 531 U.S. 510, 523 (2001). That power includes regulating matters like “notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making and publication of election returns.” *Id.* at 523-24. In other words, States can regulate only “requirements as to procedure and safeguards which experience

1 shows are necessary in order to enforce the fundamental right involved, ensuring that elections are
2 ‘fair and honest,’ and that ‘some sort of order, rather than chaos, is to accompany the democratic
3 process.’” *Id.* at 524 (citation omitted).

4 18. States may not pass ballot-access laws that fall outside of these categories. This is
5 particularly true for Presidential elections where “a State’s enforcement of more stringent ballot
6 access requirements ... has an impact beyond its borders.” *Anderson*, 460 U.S. at 795. “[I]n the
7 context of a Presidential election, state-imposed restrictions implicate a uniquely important national
8 interest,” and States have a correspondingly “less important interest in regulating Presidential
9 elections than statewide or local elections, because the outcome of the former will be largely
10 determined by voters beyond the State’s boundaries.” *Id.* at 794-95.

11 19. But even if election regulations fall outside the Qualifications Clauses and within a
12 State’s authority to regulate federal elections, those regulations still must comply with the First
13 Amendment. The First Amendment, as incorporated against the States by the Fourteenth
14 Amendment, protects the freedoms of speech and association. *Tashjian v. Republican Party of*
15 *Conn.*, 479 U.S. 208, 214 (1986). And it limits the types of restrictions that States can impose on
16 ballot access. *See Anderson*, 460 U.S. at 794 n.18.

17 20. The Supreme Court has indicated that restrictions on the right to run for public office
18 must be carefully examined, particularly when they impose significant burdens on the right of
19 voters to cast ballots for the candidate of their choice, or on the candidate’s rights under the First
20 Amendment.” *Matsumoto v. Pua*, 775 F.2d 1393, 1396 (9th Cir. 1985).

21 21. To that end, “the Supreme Court [has] developed a balancing test to resolve the
22 tension between a candidate’s First Amendment rights and the state’s interest in preserving the
23 fairness and integrity of the voting process.” *Soltysik v. Padilla*, 910 F.3d 438, 444 (9th Cir. 2018).
24 “This is a sliding scale test, where the more severe the burden, the more compelling the state’s
25 interest must be, such that ‘a state may justify election regulations imposing a lesser burden by
26 demonstrating the state has important regulatory interests.’” *Id.* at 445. “A regulation imposing
27 ‘severe’ restrictions ... is subject to strict scrutiny.” *Id.* Regulations that “bar [a candidate] from
28 office or the ballot altogether,” “suffocate ‘core political speech,’” or prohibit “endorsing ... a

1 ‘standard bearer who best represents the party’s ideologies and preferences’” are likewise subject
2 to strict scrutiny. *Id.*

3 22. “Ballot regulations ‘that impose a lesser burden on speech rights’ still must be
4 ‘reasonably related to achieving the state’s important regulatory interests.’ *Id.* Such burdens
5 “require an assessment of whether alternative methods would advance the proffered governmental
6 interests.” *Id.*

7 **C. Under the First Amendment, States cannot discriminate or retaliate against**
8 **individuals for their speech or politics.**

9 23. States likewise cannot impose ballot access rules to retaliate against political
10 opponents. “[P]olitical belief and association constitute the core of those activities protected by the
11 First Amendment,” *Elrod v. Burns*, 427 U.S. 347, 356 (1976), and the First Amendment “has its
12 fullest and most urgent application to speech uttered during a campaign for political office.”
13 *Citizens United v. FEC*, 558 U.S. 310, 339-40 (2010).

14 24. Because a State cannot “produce a result which it could not command directly,”
15 laws that do not directly regulate speech or association still violate the First Amendment if they
16 “deny a benefit to a person because of his constitutionally protected speech or associations.” *Perry*
17 *v. Sindermann*, 408 U.S. 593, 597 (1972); accord *Rutan v. Republican Party of Ill.*, 497 U.S. 62,
18 78 (1990). This is true even if the person “has no ‘right’ to [the] governmental benefit.” *Perry*, 408
19 U.S. at 597. And the withheld benefit can be something “as trivial as failing to hold a birthday
20 party.” *Rutan*, 497 U.S. at 75 n.8. “[T]he government’s reason for [acting] is what counts.”
21 *Heffernan v. City of Paterson*, 136 S. Ct. 1412, 1418 (2016).

22 25. Accordingly, a law violates the First Amendment if it was enacted to discriminate
23 or retaliate against an individual for his protected speech. “Official reprisal for protected speech
24 offends the Constitution.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006). Laws “based on the
25 identity of the speaker” are “instruments to censor”; they “run the risk that ‘the State has left
26 unburdened those speakers whose messages are in accord with its own views.’” *Citizens United*,
27 558 U.S. at 340; *NIFLA v. Becerra*, 138 S. Ct. 2361, 2378 (2018). At bottom, States cannot pass
28 legislation “when the specific motivating ideology or the opinion or perspective of the speaker is

1 the rationale.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 829 (1995). It does
2 not matter if the retaliation or discrimination is unsuccessful at chilling the target’s speech. The
3 constitutionality of discriminatory and retaliatory action cannot turn on “the plaintiff’s will to
4 fight.” *Constantine v. Rectors & Visitors of George Mason Univ.*, 411 F.3d 474, 500 (4th Cir. 2005).

5 26. Similarly, a law violates the First Amendment if it was enacted to discriminate or
6 retaliate against an individual for his politics. *See Branti v. Finkel*, 445 U.S. 507, 516-17 (1980).
7 This prohibition “reflects the First Amendment’s hostility to government action that prescribes
8 what shall be orthodox in politics.” *Heffernan*, 136 S. Ct. at 1417 (cleaned up). Laws based on
9 partisan discrimination or retaliation “press” individuals “to conform their beliefs and associations
10 to some state-selected orthodoxy.” *Rutan*, 497 U.S. at 76.

11 27. These constitutional rules are implicated whenever speech or politics motivated the
12 legislation “at least in part.” *Cruise-Gulyas v. Minard*, 918 F.3d 494, 497 (6th Cir. 2019). To
13 determine whether an impermissible purpose exists, courts first look at the “face” of the law to see
14 if, for example, it has been “gerrymander[ed]” to target particular individuals. *Sorrell v. IMS*
15 *Health Inc.*, 564 U.S. 552, 564 (2011); *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*,
16 508 U.S. 520, 533-34 (1993). “Facial neutrality” is “not determinative,” however. *Lukumi*, 508 U.S.
17 at 533-34. An impermissible purpose can also be detected from “the effect of a law in its real
18 operation” and other evidence in “the record.” *Id.* at 535; *Sorrell*, 564 U.S. at 564. “Relevant
19 evidence includes, among other things, the historical background of the decision under challenge,
20 the specific series of events leading to the enactment or official policy in question, and the
21 legislative or administrative history, including contemporaneous statements made by members of
22 the decisionmaking body.” *Lukumi*, 508 U.S. at 540.

23 **D. The Ethics in Government Act preempts States from imposing their own financial**
24 **disclosure requirements on elected officials and candidates for office.**

25 28. The Ethics in Government Act (“EIGA”) requires, among other things, candidates
26 for President to disclose personal financial information. 5 U.S.C. App. 4 § 101(a).

27 29. The disclosures the EIGA requires include extensive financial information such as
28 the source, type, and amount of all income, gifts, interest in property, and liabilities to creditors.

1 5 U.S.C. App. 4 § 102. The EIGA does not require the disclosure of tax returns.

2 30. The EIGA supersedes all other similar federal or state disclosure laws. Its
3 “provisions . . . requiring the reporting of information shall supersede any general requirement under
4 any other provision of law or regulation with respect to the reporting of information required for
5 purposes of preventing conflicts of interest or apparent conflicts of interest.” *See* 5 U.S.C. App. 4
6 § 107(b).

7 **II. California Passes SB27 in a Partisan Effort to Obtain the President’s Tax Information.**

8 **A. The Democrats’ ongoing crusade to obtain the President’s federal tax returns in the
9 hopes of finding something they can use to harm him politically.**

10 31. During the 2016 election season, then-candidate Trump disclosed extensive
11 information about his finances pursuant to the EIGA. His 2015 financial disclosure spans over 90
12 pages and includes hundreds of entries listing assets and income, bank accounts and investments,
13 financial transactions, liabilities, and the ownership structures of his companies. His 2016 financial
14 disclosure spans over 100 pages.

15 32. Having disclosed such extensive financial information, then-candidate Trump
16 declined to disclose his federal tax returns, citing ongoing IRS audits and the need to not prejudice
17 his rights in those proceedings. The Democrats—hoping to harm him politically in the Presidential
18 race—made his tax returns a major campaign issue. Secretary Clinton repeatedly insinuated that
19 their nondisclosure suggested they contained politically damaging information. As she framed the
20 criticism at one Presidential debate: “[W]hy won’t he release his tax returns? . . . Maybe he’s not as
21 rich as he says he is. Second, maybe he’s not as charitable as he says he is. Third, we don’t know
22 all of his business dealings Or maybe he doesn’t want the American people . . . to know that he’s
23 paid nothing in federal taxes. . . . It must be something really important, even terrible, that he’s trying
24 to hide.”

25 33. During the election, now-Governor Gavin Newsom repeatedly highlighted the issue
26 in a similar way. For example, he tweeted on May 12, 2016: “Folks think @realDonaldTrump is
27 avoiding tax release because he pays a very low rate. I think its because his finances are a house of
28 cards.”

1 34. He later tweeted on September 21, 2016: “47 days to Election Day. Still no tax
2 returns. @realDonaldTrump - I challenge you to prove us all wrong, show us you are not hiding
3 anything.” The next day he tweeted: “It’s now September 22nd, and we haven’t seen anything from
4 you. Where are your tax returns, @realDonaldTrump? What are you hiding?”

5 35. Ultimately, the Democrats lost this political fight in the 2016 election. Voters heard
6 the political attacks from Secretary Clinton and others, and they elected President Trump anyway.
7 Democrats across the country, however, have only become more eager to obtain the President’s tax
8 returns for political gain.

9 **B. California Democrats’ efforts to obtain President Trump’s federal tax returns.**

10 **i. California Governor Jerry Brown vetoes SB27’s predecessor bill in 2017
11 because of concerns about its legality.**

12 36. The California legislature proposed the Presidential Tax Transparency and
13 Accountability Act in 2017. The bill, also known as SB149, would have required President Trump
14 to release his tax returns as a condition of appearing on the California primary ballot.

15 37. SB149’s co-authors were state Senators Mike McGuire and Scott Wiener. In a joint
16 op-ed touting SB149, they made clear the bill’s target was President Trump: “We stand with the
17 Tax Day protesters calling for President Trump to release his tax returns President Trump’s
18 disregard for this tradition is alarming Once [our bill] becomes law, if President Trump ever
19 wants to appear on the California ballot again, he will need to do what presidential candidates have
20 done for decades before him—be open and honest about his finances with the American people.”

21 38. Senator Scott Wiener later reaffirmed SB149’s focus after it passed the California
22 legislature: “Our bill requiring presidential candidates to disclose tax returns is on the Governor’s
23 desk. No more Trump secrecy.” He also revealed that the bill was meant to make the President’s
24 reelection more difficult: “If tax transparency, CA progressive values make Trump reelection
25 harder, then I’m thrilled to be part of that effort.”

26 39. Later, Senator Wiener admitted that the bill was a partisan effort targeting President
27 Trump: “I authored only one bill that could be characterized as partisan: the presidential tax return
28 bill. It applies to candidates of both parties, but because only Donald Trump refused to disclose,

1 there's an undertone. I will own that.”

2 40. California's Office of Legislative Counsel—a nonpartisan public agency—advised
3 that the bill would be unconstitutional if enacted. *See* Ops. Cal. Legis. Counsel, No. 1718407 (Sept.
4 7, 2017), Presidential Qualifications: Tax Return Disclosure.

5 41. Despite that conclusion, the Legislature passed the bill and sent it to Governor Jerry
6 Brown for his signature.

7 42. Governor Brown, himself a Democrat, vetoed the bill because of its legal and
8 political infirmities: “This bill is a response to President Trump's refusal to release his returns
9 during the last election. While I recognize the political attractiveness—even the merits—of getting
10 President Trump's tax returns, I worry about the political perils of individual states seeking to
11 regulate presidential elections in this manner. ... First, it may not be constitutional. Second, it sets
12 a ‘slippery slope’ precedent. Today we require tax returns, but what would be next? Five years of
13 health records? A certified birth certificate? High school report cards? And will these requirements
14 vary depending on which political party is in power?”

15 43. Governor Brown recognized that conditioning ballot access on disclosing tax returns
16 infringes a candidates constitutional rights: “A qualified candidate's ability to appear on the ballot
17 is fundamental to our democratic system. For that reason, I hesitate to start down a road that will
18 might lead to an ever escalating set of differing state requirements for presidential elections.”

19 **ii. California passes SB27 under Governor Gavin Newsom.**

20 44. While current Governor Gavin Newsom was on the campaign trail, he stated that he
21 supported the bill that Governor Brown vetoed. He also regularly highlighted that President Trump
22 had not released his tax returns and insinuated that the President's reason for not doing so was
23 because he was hiding something.

24 45. After Governor Newsom was elected, Senators Wiener and McGuire reintroduced
25 a nearly identical version of the “Presidential Tax Transparency and Accountability Act,” this time
26 as SB27.

27 46. Senator Wiener reintroduced the bill because, as he explained, “Now we have a
28 different governor. We want to give him the opportunity to weigh in, and hopefully he will sign it.”

1 He also tweeted: “Today I’m joining Sen. Mike McGuire to announce a renewed effort to pass CA
2 law requiring presidential candidates to disclose tax returns to appear on ballot. Trump’s appalling
3 display this week reminds us why it’s important to know a presidential candidate’s financial
4 conflicts.”

5 47. As with its predecessor, SB27 requires presidential candidates to submit their tax
6 returns from the five previous years as a condition of appearing on the ballot for primary elections.
7 One of its stated purposes for imposing that obligation is to “provide voters with essential
8 information regarding the candidate’s potential conflicts of interest, business dealings, financial
9 status, and charitable donations.” Cal. Elec. Code § 6881.

10 48. More specifically, Section 6883(a) of the law provides that “the Secretary of State
11 shall not print the name of a candidate for President of the United States on a primary election
12 ballot, unless the candidate, at least 98 days before the presidential primary election, files with the
13 Secretary of State copies of every income tax return the candidate filed with the Internal Revenue
14 Service in the five most recent taxable years.”

15 49. The California Republican primary is March 3, 2020. By its terms, then, SB27
16 requires President Trump to file his last five federal tax returns with Defendant Padilla on or before
17 November 26, 2019.

18 50. Section 6884(a)(2) forces candidates to provide their written “consent” to grant “the
19 Secretary of State permission to publicly release a version of the candidate’s tax returns.”

20 51. Section 6884(c)(3) provides that, within five days of receipt, “the Secretary of State
21 shall make redacted versions of the tax returns available to the public on the Secretary of State’s
22 internet website.” Those “tax returns shall be continuously posted until the official canvass for the
23 presidential primary election is completed. Upon completion of the official canvass, the Secretary
24 of State shall remove the public versions of the tax returns.” Section 6884(c)(4) provides that the
25 Secretary of State then “shall retain the paper copies of the submitted tax returns until the
26 completion of the official canvass of the ensuing general election.”

27 52. Because SB27 applies only to primaries and not the general election, independent
28 candidates are not forced to disclose their tax returns as a condition for running for President.

1 53. SB27 passed the California legislature along partisan lines, with a 29-10 vote in the
2 state Senate and a 57-17 vote in the state Assembly. Governor Newsom signed the bill into law on
3 July 30, 2019.

4 54. The California Constitution provides that statutes normally “go into effect on
5 January 1 next following a 90-day period from the date of enactment of the statute.” Cal. Const.
6 art. IV, § 8(c)(1). There are limited exceptions to this rule that allow a statute to go into effect
7 immediately. One of the exceptions is if it is an “urgency statute,” which is a law “necessary for
8 the immediate preservation of the public peace, health, or safety.” Cal. Const. art. IV, §§ 8(c)(3),
9 8(d). The California legislature declared SB27 to be an urgency statute so it could go into effect
10 immediately and in time for the upcoming primary.

11 55. As with SB149, it is no secret that SB27 targets President Trump. Senator McGuire
12 argued in support of the bill that “Presidential candidates need to put their own interests aside in
13 the name of transparency. So far, our current president has done the opposite.” He also stated in
14 reference to SB27, “California didn’t pick this fight. President Donald Trump has gone against 40
15 years of tradition”

16 56. After Governor Newsom signed the bill, Senator McGuire tweeted, “Times up,
17 @realDonaldTrump. If you want to be on the CA primary ballot, release your returns. It’s a low
18 bar to hit, unless you have something to hide.” He also admitted in another tweet that President
19 Trump was the “catalyst for the bill.” And in yet another statement, Senator McGuire stated, “If he
20 has nothing to hide, President Trump shouldn’t be afraid to give American voters what they want,
21 a copy of his tax returns.”

22 57. The Senate Judiciary Committee also confirmed that President Trump was the
23 target. In a memo regarding the law’s validity, the Committee specifically noted that the law was
24 “prompted by Trump’s” decision not to disclose his tax returns.

25 58. Governor Newsom likewise made clear who the law’s target was. Before signing
26 the bill, he discussed whether President Trump would disclose his tax returns if the law were passed.
27 And his signing statement likewise insinuated that SB27 was a response to the President: “These
28

1 are extraordinary times and states have a legal and moral duty to do everything in their power to
2 ensure leaders seeking the highest offices meet minimal standards, and to restore public confidence.
3 The disclosure required by this bill will shed light on conflicts of interest, self-dealing, or influence
4 from domestic and foreign business interest.” He reiterated in another statement that the law was
5 meant to reveal whether there are any “conflicts of interest” that could affect the candidate’s
6 impartiality.

7 **CAUSES OF ACTION**

8 **COUNT I**

9 **Violation of the Presidential Qualifications Clause**
10 **42 U.S.C. § 1983**

11 59. Plaintiffs incorporate all their prior allegations.

12 60. States cannot supplement the exclusive qualifications for President set forth in the
13 text of the Constitution.

14 61. Requiring candidates for the Presidency to disclose their tax returns as a condition
15 of appearing on a ballot is an unconstitutional qualification for office.

16 **COUNT II**

17 **Violation of Presidential Electors Clause**
18 **42 U.S.C. § 1983**

19 62. Plaintiffs incorporate all their prior allegations.

20 63. Even if SB27 is a ballot-access provision, States may only issue certain procedural
21 regulations. SB27 exceeds California’s authority to issue procedural regulations governing
22 presidential elections. SB27 is thus ultra vires and unconstitutional legislation; California does not
23 have the authority to implement it.

24 **COUNT III**

25 **Violation of the First Amendment (Ballot Access)**
26 **42 U.S.C. § 1983**

27 64. Plaintiffs incorporate all their prior allegations.

28 65. Even where States may issue ballot-access regulations in federal elections, they
must exercise that authority consistent with the First Amendment. Severe restrictions must satisfy
strict scrutiny, while lesser burdens require an assessment of whether alternative methods would

1 advance the proffered governmental interests.

2 66. SB27 cannot satisfy any level of First Amendment scrutiny. It fails strict scrutiny
3 because it does not serve a compelling state interest and, in any event, is not narrowly tailored to
4 that interest. It likewise fails any lower level of scrutiny because the EIGA’s financial disclosure
5 requirements are a less restrictive alternative that already serves whatever interest SB27 purports
6 to serve.

7 **COUNT IV**
8 **Violation of the First Amendment (Retaliation)**
9 **42 U.S.C. § 1983**

10 67. Plaintiffs incorporate all their prior allegations.

11 68. The First Amendment prohibits laws enacted for the purpose of discriminating or
12 retaliating against an individual for his politics or speech.

13 69. California officials have admitted, on countless occasions, that SB27’s purpose is to
14 expose the private tax information of one individual—President Trump—for political gain.

15 70. SB27 violates the First Amendment as it singles out President Trump because he is
16 a Republican and a political opponent. It was enacted to retaliate against the President because of
17 his policy positions, his political beliefs, and his protected speech, including the positions he took
18 in the 2016 campaign.

19 **COUNT V**
20 **Preemption by the Ethics in Government Act**
21 **5 U.S.C. App. 4 § 107(b)**

22 71. The EIGA requires candidates for President to disclose financial information and
23 “supersedes any other provision of law or regulation with respect to the reporting of information
24 required for purposes of preventing conflicts of interest or apparent conflicts of interest.” 5 U.S.C.
25 App. 4 § 107(b).

26 72. SB27 requires candidates for President to disclose financial information in the form
27 of the candidates’ tax returns with the stated purpose of revealing a “candidate’s potential conflicts
28 of interest.” SB27 thus is a “provision of law ... with respect to the reporting of information
required for purposes of preventing conflicts of interest or apparent conflicts of interest.” EIGA
therefore supersedes and preempts SB27.

1 **WHEREFORE**, Plaintiffs ask this Court to enter judgment in his favor and provide the following
2 relief:

- 3 a. A declaratory judgment that SB27 violates the Presidential Qualifications Clause, the
4 Presidential Electors Clause, the First Amendment, and the Ethics in Government Act;
5 b. A permanent injunction prohibiting Defendants from implementing and enforcing SB27;
6 c. A temporary restraining order and preliminary injunction granting the relief specified
7 above during the pendency of this action;
8 d. Plaintiffs' reasonable costs and expenses, including attorneys' fees; and
9 e. All other preliminary and permanent relief that Plaintiffs are entitled to and to which the
10 Court deems just and proper.

11
12 Dated: August 6, 2019

Respectfully submitted,

13 /s/ Bryan K. Weir
14 Bryan K. Weir, CA Bar #310964
15 Thomas R. McCarthy*
16 William S. Consovoy*
17 Cameron T. Norris*
18 CONSOVOY MCCARTHY PLLC
19 1600 Wilson Boulevard, Suite 700
20 Arlington, VA 22209
21 (703) 243-9423

22
23
24
25
26
27
28
**Application for admission
pro hac vice forthcoming*