

KD Alert: Kaufman Dolowich Prevails in Defending First Amendment Free Speech Rights

(November 21, 2016) – In a first amendment case decided on November 16, 2016, a federal district court in California enjoined the California Attorney General from requiring that the Thomas More Law Center, a nonprofit legal advocacy organization, send its donor list to her as a condition of soliciting donations in the state.

Arguing that the right to anonymous free speech was threatened by the donor disclosure requirement, a legal team led by Kaufman Dolowich & Voluck (KD) San Francisco partner Louie Castoria prevailed in a nonjury trial in the U.S. District Court, Central District, Judge Manuel Real, presiding. Associate attorney Marion Cruz and paralegal James Jordan were also on the trial team.

The court found that “as applied” to the Thomas More Law Center (TMLC), which represents advocates of causes based on traditional Christian religious principles, the disclosure requirement “places individuals ‘in fear of excising their constitutionally protected rights of free expression, assembly, and association’” (citing other authority).

“Free speech can be exercised without making a sound or writing a word,” said Castoria. “Private donors who provide financial support for advocacy organizations that represent clients who advocate causes are exercising their First Amendment rights. Such donors’ identities should not be subject to mandatory disclosure to state agencies when doing so will likely expose them to harassment, boycott, or bodily harm.” He noted that on cross-examination, the Attorney General’s employees admitted that no complaints had ever been made against TMLC, nor had they conducted or planned to conduct any investigation of the Law Center.

Richard Thompson, President and Chief Counsel of the Thomas More Law Center, commented, “Louie Castoria did a fantastic job not only defending the Law Center, but defending fundamental aspects of the First Amendment.”

Since NAACP v. Alabama, 357 U.S. 449 (1958), the Supreme Court of the United States has recognized that supporters of organizations advocating controversial views have the right to donate anonymously, with their identities free from disclosure from prying government eyes other than disclosure to the IRS. KD’s team established a reasonable probability that the compelled disclosure “would burden the donors’ First Amendment Rights,” as the court found.

TMLC is a 501(c)(3) nonprofit, raising funds through charitable contributions. California state law requires TMLC to file a copy of its IRS Form 990 (including the Schedule B) with the State Registry of Charitable Trusts. It includes the names and addresses of every donor who gave more than \$5,000 in a tax year. The Form 990 is public but the Schedule B is not. Since 2001, TMLC filed its Form 990 with the Attorney General, not including its Schedule B, and each year the Attorney General accepted the registration. But in 2015, the Attorney General gave TMLC 30 days’ notice that if it did not file its Schedule B list, its tax exempt status and license to raise funds would be revoked, and its officers would be held personally liable for penalties.

The District Court granted TMLC a preliminary injunction which the Ninth Circuit partially vacated, but allowed the District Court to decide TMLC’s “as-applied” challenge at trial.

As an “as-applied” constitutional challenge, the case does not apply on a blanket basis to all advocacy organizations, but illustrates the continuing need for judicial protection of controversial free speech, on all points in the spectrum of opinion.

The case is Thomas More Law Center v. Harris, No. CV 15-3048-R, (C.D., Cal., 11/16/2016).