

More Than 250 Organizations Win With Newest SCOTUS Ruling Protecting Donor Confidentiality

The U.S. Supreme Court ruled 6-3 in favor of two donor-supported national organizations that challenged the constitutionality of California's requirement that charities and nonprofits operating in the state must provide the state attorney general's office with the names and addresses of their largest donors.

The high court ruled that the California donor disclosure requirement is facially invalid because it burdens donors' First Amendment rights and is not narrowly tailored to an important government interest.

In *Americans for Prosperity Foundation v. Bonta* (consolidated with *Thomas More Law Center v. Bonta*), the two nonprofits argued that the rule violates the First Amendment by discouraging their donors from making contributions. The California attorney general's office has attempted to require all charities and nonprofits that raise money in the state to disclose their schedule B information, which includes the names and addresses of top donors, from their IRS 990 forms. Although California says it keeps this information confidential, the state has already leaked thousands of schedule B forms since the state attorney general first started trying to enforce the requirement in 2010.

More than 250 organizations submitted amicus briefs arguing against California's donor disclosure law.

The opinion was written by Chief Justice John Roberts with dissents by Sotomayor, Breyer and Kagan. Kavanaugh and Barrett

joined in full. Alito and Gorsuch joined most of it, and Thomas joined all but two parts.

Justice Roberts wrote, "The gravity of the privacy concerns in this context is further underscored by the filings of hundreds of organizations as amici curiae in support of the nonprofits. Far from representing uniquely sensitive causes, these organizations span the ideological spectrum."

Roberts also added that "compelled disclosure requirements are reviewed under exacting scrutiny ... And there was not a single concrete instance in which pre-investigation collection of [information] did anything to advance the attorney general's investigative, regulatory or enforcement efforts."

The high court also stated, "There is a dramatic mismatch, however, between the interest that the attorney general seeks to promote and the disclosure regime that he has implemented in service of that end. Recall that 60,000 charities renew their registrations each year, and nearly all are required to file a schedule B. Each schedule B, in turn, contains information about a charity's top donors—a small handful of individuals in some cases, but hundreds in others. This information includes donors' names and the total contributions they have made to the charity, as well as their addresses ... California is not free to enforce any disclosure regime that furthers its interests. It must instead demonstrate its need for universal production in light of any less intrusive alternatives."

Furthermore, the high court wrote, "We have no trouble concluding here that the attorney general's disclosure requirement is over-broad. The lack of tailoring to the State's investigative goals is categorical—present in every case—as is the weakness of the state's interest in administrative convenience. Every demand that might chill association therefore fails exacting scrutiny."

The federal district court struck down the requirement as violating the First Amendment right to freedom of association, because it imposes a major disincentive on donors to contribute to 501(c)(3) organizations. However, a three-judge panel of the U.S. Court of Appeals for the 9th Circuit reversed the lower court. The panel ruled that the policy, which requires organizations to provide the state with the same information they provide to the IRS, was related to an important state interest in policing charitable fraud. The court of appeals ruled the state collects the information only for its own uses, and there is only a small risk that the information will accidentally be disclosed to the public.

While the entire 9th Circuit declined to reconsider the panel's ruling, five judges filed a blistering dissent and stated that donors of the plaintiffs' organizations have previously suffered harassment, threats, violence and economic boycotts. This California requirement would certainly impede the willingness of donors to contribute to 501(c)(3) organizations that hold or promote views deemed highly controversial in modern society.

Liberty Counsel founder and Chairman Mat Staver said, "Today's decision by the high court protects the confidentiality of major donors to private charities and nonprofit organizations. This is a great decision that ensures that the government cannot intrude and demand the individual identities and addresses of contributors. In the past, the California attorney general's office has leaked sensitive information which resulted in donor harassment. The government has no business interfering with this private information." {eo}

This article originally appeared at .