First Amendment Victory in U.S. Supreme Court: Unconstitutional to Require Charities to Disclose Donors' Identities

On July 1, 2021, Quinn Emanuel won a seminal First Amendment victory in the United States Supreme Court, protecting the rights of all nonprofits and their donors. The Court adopted our arguments as to why and how the First Amendment prohibits government from making sweeping, unjustified demands that charities disclose the identities of their individual donors. According to the Court's decision in *Americans for Prosperity Foundation v. Bonta*, it is facially unconstitutional for the State of California to demand that charities report the names and addresses of their major donors. Chief Justice Roberts' opinion for the Court is the most significant decision vindicating First Amendment associational freedom in almost 60 years.

This decision is the capstone for over six years of litigation on behalf of the Foundation, a 501(c)(3) that has been registered in California for years without adverse incident. From first drafting the complaint in 2014, to obtaining a preliminary injunction, to prevailing in a bench trial, and then fighting for this outcome during years of appeals, the firm built the right record to yield this ultimate victory.

I. Background

Like many charities, Americans for Prosperity Foundation respects the confidentiality of its donors. In October 2014, however, the Attorney General of California suddenly warned the Foundation that it would face fines and lose the ability to fundraise in California unless it turned over its donor list within 30 days. California's demand stemmed from a novel policy requiring each of the 60,000 charities that renew their registrations annually in California to disclose donor information to the State.

After California refused to relent, we sued on the Foundation's behalf in the U.S. District Court for the Central District of California and won a preliminary injunction prohibiting the Attorney General from collecting the information demanded. But the U.S. Court of Appeals for the Ninth Circuit reversed and remanded. The District Court then held a multi-day bench trial including testimony (and key concessions) by California officials, after which it permanently enjoined the Attorney General from collecting donor information from the Foundation. Again, the Ninth Circuit reversed. We petitioned the Supreme Court for review, arguing that California's dragnet demand for sensitive donor information violated the First Amendment.

II. Opinion

The Supreme Court agreed. Citing its seminal decision in *NAACP v. Alabama ex. rel. Patterson*, the Court reaffirmed that compelled disclosure of charities' donor information chills First Amendment rights of charities and their donors. For that reason, the Court agreed that disclosure requirements must be "narrowly tailored to the government's asserted interest."

The Court concluded that California's blanket disclosure requirement does not meet this exacting standard. While California has a legitimate interest in preventing charitable fraud, the Court held, "[t]here is a dramatic mismatch . . . between the interest that the Attorney General seeks to promote and the disclosure regime he has implemented in service of that end." The Court noted that the information the State demands "includes donors' names and the total contributions they have made to the charity, as well as their addresses." Assessing the trial record we compiled, the Court found that "there was not a single, concrete instance in which the blanket collection of this sensitive information did anything to advance the Attorney General's

investigative, regulatory or enforcement efforts." The Court also noted that the Attorney General has more targeted means of collecting donor information for charities it suspects of wrongdoing. And the Court found California's blunderbuss approach to disclosure "particularly dubious given that California . . . did not rigorously enforce the disclosure obligation until 2010." Nor could the State's interest in "administrative convenience" justify its blanket demand for donor information given the seriousness of the burden it imposed on First Amendment rights.

Finally, the Court noted that, while California had promised to keep the donor information it collects private, its "assurances of confidentiality [were] not worth much." "During the course of the litigation," the Court recounted, "the Foundation identified nearly 2,000 confidential Schedule Bs that had been inadvertently posted to the Attorney General's website, including dozens that were found the day before trial." And "[o]ne of the Foundation's expert witnesses also discovered that he was able to access hundreds of thousands of confidential documents on the website simply by changing a digit in the URL." Quoting the District Court's factual finding, the Supreme Court noted the sheer volume of the Attorney General's "careless mistakes" that our team unearthed during trial was "shocking." In light of those mistakes, the Court agreed with the District Court that "the Attorney General's promise of confidentiality 'rings hollow.'" And the Foundation was well justified in fearing that its donors could face reprisals if their identities were disclosed given our evidence at trial that the Foundation's "supporters have been subjected to bomb threats, protests, stalking, and physical violence."

III. Significance

Importantly, the victory in this case extends beyond the Foundation. The Court went further in holding that California's disclosure demand is facially unconstitutional such that it cannot be applied to any charities in California. The Court noted that "hundreds of organizations" that "span[ned] the ideological spectrum"—including the ACLU, the Council on American-Islamic Relations, and the NAACP, to name just a few—filed briefs as *amici curiae* supporting the Foundation. These filings underscore that the chilling effect from the potential exposure of sensitive donor information is "real and pervasive." Quoting its decision in *NAACP v. Button*, the Court held that "[t]he risk of a chilling effect on association [was] enough" for it to invalidate California's demand *in toto* "[b]ecause First Amendment freedoms need breathing space to survive."

In sum, the Court concluded, "the Attorney General's disclosure requirement imposes a widespread burden on donors' associational rights. And this burden cannot be justified on the ground that the regime is narrowly tailored to investigating charitable wrongdoing, or that the State's interest in administrative convenience is sufficiently important." Not only has California's demand been struck down, therefore, but a broader precedent has been set that puts teeth in exacting scrutiny on behalf of charities spanning the spectrum. Other states must now think hard and tread carefully before intruding upon private associations and their donors—and they must be prepared to withstand exacting scrutiny and evidentiary testing in court, in a way that California could not.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to reach out to:

Derek Shaffer
Email: derekshaffer@quinnemanuel.com
Phone: +1 202-538-8123

William Burck
Email: williamburck@quinnemanuel.com
Phone: +1 202-538-8120