

# American Thinker

## California Just Doesn't Get It

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They know it is wrong. You have told them it is wrong. But our kids do it anyway, don't they? Of course, we know once caught, they promise they will never do it again. *Ever*. They promise they get it, but you walk away from the conversation thinking, "They don't get it."

That was the feeling one got from the state of California after hearing oral arguments this week in two significant First Amendment cases before the United States Supreme Court: *Americans for Prosperity Foundation v. Bonta* and *Thomas More Law Center v. Bonta*.

The cases challenge California's effort to force all non-profits that solicit support in the state to disclose to the government sensitive information about their major donors.

Although the state recognizes the glaring constitutional burdens on individual rights to freedom of speech and association, it still claims it needs the private information to guard against fraud. Besides, the state promises to keep the information super confidential.

Only they haven't. As Justice Elena Kagan pointed out during oral arguments, the district court that heard the evidence in this case found that "there was a pervasive, recurring pattern of inadvertent disclosure by California." In other words, they promise to keep the donor information private, but they don't. They leak them intentionally or by error, ensuring, as the court also found, that "donors would likely be subject to threats and harassment."

So, what do you do when your child has a pervasive and recurring pattern of misbehavior that endangers others? Do you just need them to promise you (one more time) that they will never do it again?

That's what California argues should satisfy the U.S. Supreme Court. To the finding of a pervasive and recurring pattern of illegally disclosing confidential information, the state argued that the district court also said their efforts to correct those mistakes are "commendable."

Oh, okay.

But the Supreme Court must come down hard against California and other efforts of this type. This is the whole reason why the First Amendment exists. The Founders were concerned with the government's misuse of power. Of course, the government will use its power to quash political opponents, given a chance. We all know this. Just like you know your child will do it again, even after he promised he wouldn't. It is why he needs strict, clear guidelines and steep consequences as a deterrent.

The same is true of California in this case. The Supreme Court must quash these unwarranted constitutional violations clearly and decisively.

We will see these efforts in the future -- guaranteed. Even now, the federal push to pass H.R. 1/S.1 presents us with some of the same malicious impulses. Sen. Sheldon Whitehouse (D-Rhode Island) has infamously been on a full-on campaign against those involved in judicial nominations and proceedings with whom he disagrees. The focus is, predictably, on his political opponents.

As the Founders wrote in Federalist No. 51, "If angels were to govern men, neither external nor internal controls on government would be necessary." But men govern, and the Constitution, and by extension, the Supreme Court, must be wise to guard against men's natural impulses by striking down efforts as blatantly unconstitutional as this one.

Two things hung heavily over the California government's implausible argument in this case. First, the unnecessary nature of its constitutional violation. As Justice Brett Kavanaugh noted, "Forty-six other states have not sought this kind of information" and are able to still protect against fraud. And even in the case of California, they had used this information only in a handful of investigations over ten years. They justify this gratuitous violation of our rights in the name of collecting data that is just not that useful for the government's stated interest. The testimony is that they will use it rarely if the state somehow manages to enforce it in the manner it purports to want to use it which it has already proven it cannot do.

Second, the monumental burden on First Amendment freedoms. This is why you had organizations from across the political spectrum joining together as *amici* against this pernicious effort by California. From Concerned Women for America to the Cato Institute to the ACLU, and beyond all submitted briefs against the state in this case, recognizing the dangers to our liberties represented by this policy.

The good news is that most justices seemed aware of these dangers, too, and as such, we can expect a decisive victory when the decision comes out sometime this summer.