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Supreme Court Backs Donor Privacy for California Charities

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The Supreme Court ruled on Thursday that California may not require charities soliciting contributions in the state to report the identities of their major donors.

The vote was 6 to 3, with the court's three liberal members in dissent. Chief Justice John G. Roberts Jr., writing for the majority, rejected the state's requirement, saying it violated the First Amendment's protection of the freedom of association.

"California casts a dragnet for sensitive donor information from tens of thousands of charities each year," he wrote, "even though that information will become relevant in only a small number of cases."

The decision concerned charitable donations but its logic was sweeping, Justice Sonia Sotomayor wrote in dissent, suggesting that it could erode disclosure laws concerning political campaigns, too.

"Today's analysis marks reporting and disclosure requirements with a bull's-eye," she wrote. "Regulated entities who wish to avoid their obligations can do so by vaguely waving toward First Amendment 'privacy concerns.'"

California's disclosure requirement was challenged by Americans for Prosperity Foundation, a group affiliated with the Koch family, and the Thomas More Law Center, a conservative Christian public-interest law firm. They said it chilled the groups' ability to raise money and subjected donors to possible harassment.

The disputed measure required charities to file with the state a copy of their Internal Revenue Service Form 990, including its Schedule B, which identifies major donors.

A federal trial judge in California blocked the requirement, rejecting the state's argument that it used the forms to investigate charitable misconduct. The judge found that investigations or audits based on the forms were rare and that the information in question could be obtained in other ways, notably by using subpoenas.

The judge also found that California had promised to keep the forms secret but had not always done so. According to court papers, the challengers discovered in 2015 that the state had displayed about 1,800 forms on its website. State officials said that the disclosures were inadvertent and promptly corrected and that the state had imposed new security measures.

The United States Court of Appeals for the Ninth Circuit, in San Francisco, reversed the trial judge's ruling, saying that the filing requirement promoted investigative efficiency and that the security breaches had been addressed.

Chief Justice Roberts wrote that the court has long protected the right of free association guaranteed by the First Amendment, notably in a 1958 decision shielding the membership list N.A.A.C.P.'s Alabama office from state officials there.

"Because N.A.A.C.P. members faced a risk of reprisals if their affiliation with the organization became known — and because Alabama had demonstrated no offsetting interest 'sufficient to justify the deterrent effect' of disclosure — we concluded that the state's demand violated the First Amendment," the chief justice wrote, quoting from the decision.

Chief Justice Roberts said there was a similar problem in California. "We do not doubt that California has an important interest in preventing wrongdoing by charitable organizations," he wrote. "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."

Chief Justice Roberts wrote that 60,000 charities renewed their registrations in California each year, and nearly all filed the required form. But, he added, quoting from the trial judge's ruling, "there was not 'a single, concrete instance in which pre-investigation collection of a Schedule B did anything to advance the attorney general's investigative, regulatory or enforcement efforts.'"

"In reality, then, California's interest is less in investigating fraud and more in ease of administration," the chief justice wrote. "This interest, however, cannot justify the disclosure requirement."

Justices Clarence Thomas, Samuel A. Alito Jr., Neil M. Gorsuch, Brett M. Kavanaugh and Amy Coney Barrett joined all or most of the majority opinion.

In dissent, Justice Sotomayor said the court had taken a large and misguided step.

"Today's decision discards decades of First Amendment jurisprudence recognizing that reporting and disclosure requirements do not directly burden associational rights," she wrote.

Justice Sotomayor defended California's approach.

"In the United States, responsibility for overseeing charities has historically been vested in states' attorneys general, who are tasked with prosecuting charitable fraud, self-dealing and misappropriation of charitable funds," she wrote. "Effective policing is critical to maintaining public confidence in, and continued giving to, charitable organizations."

"California's interest in exercising such oversight is especially compelling given the size of its charitable sector," Justice Sotomayor wrote "Nearly a quarter of the country's charitable assets are held by charities registered in California."

She added that many donors had no qualms about having their donations made public.

“A significant number of the charities registered in California engage in uncontroversial pursuits,” she wrote “They include hospitals and clinics; educational institutions; orchestras, operas, choirs and theatrical groups; museums and art exhibition spaces; food banks and other organizations providing services to the needy, the elderly and the disabled; animal shelters; and organizations that help maintain parks and gardens.”

“Of course,” Justice Sotomayor wrote, “it is always possible that an organization is inherently controversial or for an apparently innocuous organization to explode into controversy. The answer, however, is to ensure that confidentiality measures are sound.”

Justice Stephen G. Breyer and Elena Kagan joined Justice Sotomayor’s dissent.

In the context of elections, the Supreme Court has supported laws requiring public disclosure. In the Citizens United campaign finance decision in 2010, the court upheld the disclosure requirements before it by an 8-to-1 vote. In a second 8-to-1 decision that year, Doe v. Reed, the court ruled that people who sign petitions to put referendums on state ballots do not have a general right under the First Amendment to keep their names secret.

Justice Sotomayor accused the majority of ignoring and abandoning the second precedent.

“Just 11 years ago,” she wrote, “eight members of the court, including two members of the current majority, recognized that disclosure requirements do not directly interfere with First Amendment rights. In an opinion barely mentioned in today’s decision, the court in Reed did the opposite of what the court does today.”

The challengers in the case, Americans for Prosperity v. Bonta, No. 19-251, said the issues were different from those involved in electoral politics. Charities, they said, needed protection given the nation’s volatile political climate. They received support from hundreds of groups across the ideological spectrum, including the Chamber of Commerce, the Cato Institute, the Electronic Frontier Foundation, the American Civil Liberties Union, and the NAACP Legal Defense and Educational Fund.

Chief Justice Roberts said that was notable.

“Far from representing uniquely sensitive causes,” he wrote, “these organizations span the ideological spectrum, and indeed the full range of human endeavors: from the American Civil Liberties Union to the Proposition 8 Legal Defense Fund; from the Council on American-Islamic Relations to the Zionist Organization of America; from Feeding America—Eastern Wisconsin to PBS Reno. The deterrent effect feared by these organizations is real and pervasive, even if their concerns are not shared by every single charity operating or raising funds in California.”