



Justices skeptical of California nonprofit disclosure law

Ariane de Vogue

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Several US Supreme Court justices seemed skeptical Monday of a California law that requires charitable organizations that solicit donations to disclose a list of their contributors to the state attorney general.

The challenge is brought by conservative non profits American for Prosperity Foundation (a Koch affiliated group) and the Thomas More Law Center, who want to keep the identity of their donors secret and argue that the state has not shown a compelling reason for the law.

They say that the law will chill donors from coming forward for fear of harassment in violation First Amendment protections on speech and association. Although the information is supposed to be confidential, the groups say that the state has in the past made inadvertent disclosures.

The law represents a "totally gratuitous First Amendment violation" Derek L. Shaffer, an attorney for the groups, told the court at oral arguments.

Some conservative justices, led by Justice Samuel Alito, expressed sympathy for Shaffer's concerns.

Alito suggested that donors to groups that take "unpopular" positions might have "reasons to fear reprisal" particularly because the state had experienced "massive breaches" of confidentiality when it comes to the data.

It was a sentiment also shared by Justice Clarence Thomas.

"Do you think it would be reasonable for someone who wants to make a substantial contribution to an organization that has been accused of being racist or homophobic or white supremacist, that in this environment that they would be chilled because they have reduced or no confidence that their contribution will be kept confidential," Thomas asked a lawyer for California.

He also expressed fear that there might be an "intentional leak" of the information.

Justice Brett Kavanaugh questioned California's reason for needing the law, noting that most other states don't have similar laws.

The liberal justices did express concern at certain points for how the law might impact the groups behind the challenge, but they seemed supportive for California's justifications for the law in

general. Justice Stephen Breyer also expressed concern that if the court were to rule in favor of the groups in the case at hand, it could impact disclosure laws in the election context, something that the court has upheld in the past. He questioned whether the case "is really a stalking case" for campaign finance law.

The case is being closely watched by those who fear it could lead to more anonymous "Dark Money" flowing into the system. US Senators, led by Rhode Island Democrat Sheldon Whitehouse, filed a brief in support of the law.

"Political spending by opaque entities with hidden funders has come to dominate the public sphere, unchecked by the scrutiny that transparency once provided," they argued in court papers.

But an assortment of odd bedfellows including the American Civil Liberties Union, the NAACP, the libertarian Cato Institute, and the conservative Institution for Justice filed briefs in support of the non-profits.

The law at issue mandates that non-profits that solicit donations in the state identify their substantial donors to the California attorney general. The same information already goes to the IRS -- found on the IRS Form 990. The Schedule B attachment requires the organizations to report the names and addresses of their largest contributors. Failure to comply could lead to late fees and suspicion of their registration as a charitable organization.

A district court ruled in favor of the groups reasoning that the government had not shown that the requirement was substantially related to a sufficiently important governmental interest. The court held that there was "ample evidence" that donors would face public hostility and intimidation if their affiliation with the organization was publicly known and expressed concern about inadvertent disclosure.

The 9th US Circuit Court of Appeals, however, said the groups had not shown that their First Amendment rights would be chilled and that the law "is substantially related to an important state interest in policing charitable fraud."

Acting California Solicitor General Elizabeth Prelogar told the justices Monday that the lower court had used the correct -- less rigorous standard -- to examine the law, but that the justices should send the case back down to the lower court for a more complete analysis on the harm the contributors would face if their identities did become publicly known.

She stressed that the court should leave untouched the IRS's collection of the same information which the government offers as a condition for receiving tax exemptions.

Three other states, New York, Hawaii and New Jersey have a similar law.