

# THE CHRISTIAN POST

## Supreme Court weighs if California can force nonprofits to disclose private donor information

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Oral arguments were completed before the U.S. Supreme Court on Monday on whether Americans will remain free to give to nonprofit organizations privately and without the fear of harassment or fear that nonprofits will be forced to disclose private donor information.

The decision will determine if charities in California will be forced to disclose the names of donors to state regulators, a regulation opposed by both liberal and conservative groups.

Since March 2012, California's attorney general has harassed Thomas More Law Center, ordering the center to release confidential donor information, such as the names and addresses of major donors.

California is one of four states that require nonprofits to submit a copy of their Schedule B tax form, which provides names and addresses of those who donated more than \$5,000 to their causes. Supporters of such measures contend that striking them down could lead to a "proliferation of 'dark money' in American politics."

According to the Thomas More Law Center, a Michigan-based conservative legal nonprofit that defends religious freedom, family values and sanctity of life, forcing organizations to reveal their donors threatens an individual's freedom of association.

Around 5% of Thomas More's donors are California residents, and the center has operated cohesively with California's attorney general for years until the attorney general began to demand the center turn over confidential donor information.

California demanded the names and addresses of the center's major donors, even though a trial showed the California Attorney General's Office had no compelling need for confidential donor information and is known for leaking information.

John Bursch, senior counsel and vice president of appellate advocacy at Alliance Defending Freedom, a legal organization committed to protecting religious freedom, represented Thomas More Law Center before the Supreme Court on Monday.

"Every American should be free to peacefully support causes they believe in without fear of harassment or intimidation," Bursch said in a statement. "Public advocacy is for everyone, not

just those able to weather abuse. Forced donor disclosure is a threat to everyone and discourages both charitable giving and participation in the marketplace of ideas.”

California Attorney General Matthew Rodriguez, however, has maintained that regulation to disclose donor information is necessary to enforce charitable fraud laws.

But Bursch stated in a piece published by The Hill that California’s Attorney General’s Office has a history of leaking confidential documents and has published private data online in the past, leaving confidential data easily exposed and vulnerable to internet hackers.

“Given California’s careless handling of private information, its demand for donor data threatens to decrease charitable giving, particularly to charities that work on sensitive issues,” Bursch wrote.

“That’s why organizations ... have filed briefs that agree with my employer [Alliance Defending Freedom]’s merits brief on behalf of the Law Center, urging the court to strike down California’s dangerous regulation.”

Twenty-two states and several organizations have submitted over 40 friend-of-the-court briefs to the Supreme Court to support ADF’s argument that Americans should remain free to support nonprofit organizations and causes without fear, harassment or threats.

“As sister states with virtually indistinguishable law-enforcement and anti-fraud interests, our collective experience is uniform and unequivocal: we don’t need this sort of compelled collection of donor information for legitimate law enforcement purposes, and its stockpiling is unlikely to lead to any outcome other than mischief and chilling of speech,” the brief filed by 22 states stated.

Those who submitted briefs in favor of ADF’s position include groups across the ideological spectrum who all share the concern that the forced disclosure of private donors could threaten free speech.

The National Association for the Advancement of Colored People, the People for the Ethical Treatment of Animals, the American Civil Liberties Union, the Cato Institute and ChinaAid all filed friend-of-the-court briefs to support the ADF-represented case for Thomas Moore Law Center.

An ADF statement said Supreme Court justices were “sympathetic” to the law center’s and Americans for Prosperity Foundation’s positions presented in oral arguments.

“The justices carefully listened to the arguments, and we hope the court will decide in favor of the First Amendment’s promise of the freedom to associate with like-minded groups, which includes the right to citizen privacy,” Bursch said.

Justice Clarence Thomas cited how the government used confidential census data to locate Japanese citizens during World War II for internment. He expressed concern that in today’s

culture, the disclosure of confidential information could be used to loosely label people as “racist” or “white supremacist” based on their once-private giving information.

Bursch also expressed concern that the forced disclosure of nonprofit donors could lead to “cancel culture.”

“Potential givers to charities have good reason to fear being doxed — that is, having their public information spread for malicious purposes,” Bursch said. “Too many are quick to ostracize, lambast, and threaten people who they disagree with politically or morally. This tendency — often described as ‘cancel culture’ — shouldn’t be codified or aided by the force of law.”

Justice Neil Gorsuch showed concern that ruling for California could lead to the government mandating the disclosure of even more personal information from citizens, such as Christmas card lists or dating history.

Justice Stephen Breyer raised a question about how a ruling against California might impact campaign finance rules.

“If you win in this case, it will have been because the interest of the donors in maintaining privacy of their giving to a charity... outweighs the interest of the state in having a law on the books that even if it never is actually enforced frightens people into behaving properly,” Breyer argued.

“But if we hold that, can we distinguish campaign finance laws where the interest is even stronger in people being able to give anonymously?”

While the Trump administration filed a brief opposing the California policy last year, the federal government’s position on the case has changed under the Biden administration, which is calling for the court to send the case back to a lower court.

“Because the court of appeals’ analysis was incomplete, a remand is appropriate to allow the court to reassess the burden that California’s disclosure requirement places on the associational rights petitioners assert,” a brief led by Acting Solicitor General Elizabeth B. Prelogar states.

“The court could then determine whether the disclosure requirement satisfies exacting scrutiny as applied to petitioners, in light of the principles set forth above.”