



A freedom on which all can agree; will the Supreme Court?

John Bursch

April 25, 2021

In our polarized national moment, the U.S. Supreme Court often rules on divisive issues. A few elites, including some Democratic state attorneys general, would have you believe that is the case in Thomas More Law Center v. Rodriguez, which the court will hear on Monday. But the public should know that this case is not divisive: an astoundingly diverse coalition of public-interest groups across the ideological spectrum all agree on what the outcome should be.

The plaintiffs, Thomas More Law Center and Americans for Prosperity Foundation, are nonprofit organizations challenging the California attorney general's requirement that all charities fundraising in the state annually provide the office with their Schedule B 990 forms, which contain the names and addresses of top donors. The AG's office claims this policy is necessary to thwart fraud. But in practice, the policy does nothing to prevent fraud while creating alarming privacy risks for donors nationwide.

Though California has been attempting to enforce this policy for about a decade, it has never once used a Schedule B to initiate a fraud investigation. And when the state initiates an investigation, it has never had a problem obtaining a Schedule B with a specific request. The policy's only purpose is to force innocent nonprofits to disclose their donors' private information so California can collect it.

If the California attorney general had difficulty obtaining a suspected fraudulent charity's Schedule B, the AG can simply ask the IRS. The IRS even has an expedited process to give this information to states more quickly, but the AG's Office refused to allow the IRS to conduct a three-day audit of California's security system, which was necessary to participate in that program.

The reason for that refusal seems dangerously clear: the California attorney general's office has leaked confidential donor information like a sieve. In 2009, it published nearly 1,800 Schedule Bs online. At one point, anyone could see all the Office's Registry of Charitable Trusts' confidential documents by altering a single digit at the end of a URL. Other California

government agencies have leaked private information as well, including California's Employment Development Department, Department of Motor Vehicles, Department of Insurance, and Department of Child Support Services.

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. That's why organizations ranging from the ACLU, to the Cato Institute, to the People for the Ethical Treatment of Animals (PETA) 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.

Needless government demands for the private information of nonprofit supporters violate the Free Association Clause of the First Amendment. The Supreme Court first reached a similar determination in the landmark 1958 decision, NAACP v. Alabama, when the state of Alabama demanded the civil rights organization to provide the state with its membership lists. The policy had an obviously detrimental effect on the NAACP's membership; NAACP membership in southern states declined by 50 percent due to such regulations. It's no wonder the U.S. Supreme Court ruled unanimously against the state of Alabama.

Thankfully, most nonprofit donors today don't face the same level of hostility NAACP members faced in the 1950s. But the same principles apply. For example, Thomas More Law Center's clients, donors, and employees have faced harassment, death threats, and even two assassination plots. If Law Center supporters had their names and addresses leaked online, they would have good reason to fear ideological opponents doxing them, blackmailing them, or threatening their families' safety.

The freedom to support charities anonymously is an activity all Americans have a right to enjoy, and that right is guaranteed under the Free Association Clause. California's government has no legitimate interest — let alone a “compelling” one — to justify its demand for private donor information from charities that have done nothing wrong. In our polarized, political climate, the right to donor privacy must be protected. The Supreme Court should recognize this and reverse.