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Supreme Court Wary of Donor Disclosure Requirement for Charities

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The Supreme Court on Monday seemed skeptical of California's demand that charities soliciting contributions in the state report the identities of their major donors.

A majority of the justices appeared to agree that at least the two groups challenging the requirement — Americans for Prosperity, a foundation affiliated with the Koch family, and the Thomas More Law Center, a conservative Christian public-interest law firm — should prevail in the case.

It was less clear whether the court would strike down the requirement entirely for all charities as a violation of the First Amendment's protection of the freedom of association. And the justices gave few hints about whether their ruling, expected by June, would alter the constitutional calculus in the related area of disclosure requirements for campaign spending.

Justice Stephen G. Breyer repeated concerns expressed in supporting briefs that the case could have broad implications. "This case is really a stalking horse for campaign finance disclosure laws," he said.

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.

If the approach of the groups challenging California's requirement for charities were adopted, Justice Sonia Sotomayor said, "I don't see how the public disclosure at issue in Doe would have survived."

Derek L. Shaffer, a lawyer for the challengers in Monday's case, said that the electoral context was different and that charities needed protection given the nation's volatile political climate. He added that California's reporting requirement subjected donors to the real potential of harassment, particularly in light of the state's history of failing to keep the donor lists secret.

“Think about medical organizations that may take views about masking, about vaccinations,” he said.

Contributing to a charity for Asian-Americans, he said, might have seemed uncontroversial not long ago. “But today, in 2021, sad to say,” he said, “it could be a life-or-death issue that their identities have been disclosed.”

Justice Clarence Thomas appeared to agree that donors may be endangered by disclosures of their identities. “In this era,” he said, “there seems to be quite a bit of loose accusations about organizations — for example, an organization that had certain views might be accused of being a white supremacist organization or racist or homophobic.”

The challengers 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.

Justice Brett M. Kavanaugh read from a supporting brief filed by the last two groups: “A critical corollary of the freedom to associate is the right to maintain the confidentiality of one’s associations, absent a strong governmental interest in disclosure.”

The case, Americans for Prosperity v. Bonta, No. 19-251, concerned a requirement that charities file with California a copy of an Internal Revenue Service form that identifies major donors. Federal law requires the I.R.S. to keep the form confidential.

California also promised to keep the forms secret, but it has not always done so. According to court papers, it had inadvertently displayed over 1,800 forms on its website. The state has said that it has imposed new security measures.

Justice Samuel A. Alito Jr. said there was little reason to trust the state. “The brief filed by the A.C.L.U. and the NAACP Legal Defense Fund says that we should regard your system as a system of de facto public disclosure because there have been such massive confidentiality breaches in California,” he told Aimee A. Feinberg, a lawyer for California.

She responded that a judge had said the state’s efforts “to rectify past lapses and to prevent them in the future were commendable.”

Mr. Shaffer said California had other ways to investigate potential fraud, including by auditing individual charities.

Justice Elena Kagan said not all charities objected to making their donors’ names public, suggesting that a blanket rule was not needed. “Most charities disclose their donors,” she said. “In fact, it’s part of their strategy, that the more disclosure there is, the more fund-raising and association there is.”

Mr. Shaffer said that anything less than a ruling doing away with the requirement entirely for all charities “will be a Pyrrhic victory.” Requiring thousands of charities to litigate whether their donors could be subject to harassment would be, he said, a burden at odds with First Amendment freedoms.

Elizabeth B. Prelogar, the acting United States solicitor general, proposed a middle ground that did not seem to interest the justices. She urged the Supreme Court to return the case to the

federal appeals court in California for a fresh look at whether the two groups challenging the requirement had provided sufficient evidence that their own First Amendment rights had been violated.