



Supreme Court Ruling Delivers 'Dark, Dark Day for Democracy'

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The U.S. Supreme Court's conservative majority on Thursday further empowered moneyed interests to manipulate elections through untraceable campaign contributions—dark money—by ruling in favor of two right-wing nonprofit groups who argued that California's donor disclosure requirement violated their First Amendment rights.

The Thomas More Law Center, a Christian legal advocacy organization, and Americans for Prosperity (AFP), a libertarian group funded by billionaire Charles Koch, challenged a California requirement that nonprofits identify their contributors in their state tax filings. The groups asserted that forcing such disclosures restricted their freedom of association.

Writing for the court's conservative majority in *Americans for Prosperity Foundation v. Bonta* (pdf), Chief Justice John Roberts ruled that "California's blanket demand" for disclosure "is facially unconstitutional."

"When it comes to the freedom of association, the protections of the First Amendment are triggered not only by actual restrictions on an individual's ability to join with others to further shared goals," Roberts wrote. "The risk of a chilling effect on association is enough."

The nonprofits were supported by an unusual array of groups including the ACLU, the libertarian Cato Institute, the LGBTQ+ advocacy group Human Rights Campaign, the right-wing Institute for Justice, and the NAACP.

Liberal Justices Sonia Sotomayor, Stephen Breyer, and Elena Kagan dissented. "Today's analysis marks reporting and disclosure requirements with a bull's-eye," wrote Sotomayor. "Regulated entities who wish to avoid their obligations can do so by vaguely waving toward First Amendment 'privacy concerns.'"

Some observers asserted that Thursday's Supreme Court ruling was the latest in a chain of decisions favoring moneyed interests at the expense of democracy in the name of the First Amendment. In *Citizens United v. Federal Election Commission* the court affirmed that money

in the form of unlimited campaign donations is free speech; in *Americans for Prosperity v. Bonta*, the justices ruled that dark money is free association.

As Citizens for Responsibility and Ethics in Washington (CREW) president Noah Bookbinder noted Thursday, "even in *Citizens United*, the Supreme Court said all that money in politics was okay because it would all be disclosed."

"But the court now says there is a right to donor privacy which, make no mistake, will mean more dark money in politics," he added. "This is bad news."

Sen. Richard Blumenthal (D-Conn.) weighed in on the ruling, tweeting that "if *Citizens United* opened the floodgates to corrupting political spending, then this decision breaks the levees. Today's decision further entrenches dark money's hold on our political system and policy—making by dismissing decades of legal precedent—not to mention basic common sense."

Roll Call reports that Democratic lawmakers argued in a brief led by Rep. Sheldon Whitehouse (D-R.I.) that the ruling shields billionaires, fossil fuel corporations, and other wealthy interests seeking to conceal their secret spending.

"We are now on a clear path to enshrining a constitutional right to anonymous spending in our democracy, and securing an upper hand for dark-money influence in perpetuity," Whitehouse said in a statement.

Whitehouse was also among several Democratic lawmakers who had urged Justice Amy Coney Barrett to recuse herself from the case, as AFP had run a major advertising campaign in support of her confirmation last year. AFP had also spent heavily to help secure the confirmation of Justices Neil Gorsuch and Brett Kavanaugh.

Dark money spending at the federal level topped \$1 billion in the 2020 election cycle, which transparency advocates OpenSecrets called "a massive sum driven by an explosion of secret donations boosting Democrats."

According to OpenSecrets:

The billion-dollar sum includes a whopping \$660 million in donations from opaque political nonprofits and shell companies to outside groups. In 2020, dark money groups preferred to bankroll closely tied super PACs rather than spend the money themselves—politically active nonprofits that do not disclose their donors reported roughly \$88 million in direct election spending to the Federal Election Commission. The remainder of the total is made up of spending on "issue ads" targeting candidates online and on the airwaves.

Also on Thursday, the same six right-wing Supreme Court justices dealt a blow to voting rights by upholding voter suppression policies in Arizona, fueling calls by Democratic lawmakers and progressive advocacy groups for congressional action to pass not only the For the People Act and the John Lewis Voting Rights Advancement Act, but also the Judiciary Act of 2021, which would increase the number of high court justices from nine to 13.

"These decisions today only further underscore the need for Congress to act to preserve democracy by ensuring that every eligible American is able to freely exercise their fundamental right to vote and that billionaires are no longer able to buy elections," Senate Majority Leader Chuck Schumer (D-N.Y.) said in a statement in which he called the *Americans for Prosperity* ruling "jaw-dropping."