



## Supreme Court invalidates California's donor disclosure requirement

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The Supreme Court on Thursday invalidated a California rule that requires charitable organizations to disclose the names of contributors in a case that could impact the future of “dark money” politics.

The opinion was 6-3 along conservative-liberal lines.

“The upshot is that California casts a dragnet for sensitive donor information from tens of thousands of charities each year, even though that information will become relevant in only a small number of cases involving filed complaints,” Chief Justice John Roberts wrote.

The state’s desire to police charitable fraud imposes a “widespread burden on donors’ First Amendment rights that cannot be justified,” he added.

Campaign finance reform had expressed fear that such a ruling could eventually lead to more anonymous money — called dark money — to enter the political sphere.

The case had pitted the interest of charities to maintain the privacy of their donors against the states’ interest in policing charitable fraud.

California mandated that non-profit charities 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 required the organizations to report the names and addresses of their largest contributors. Failure to comply had the potential to lead to late fees and suspicion of their registration as a charitable organization.

The challenge against the state law was brought by conservative non-profits American for Prosperity Foundation (a Koch-affiliated group) and the Thomas More Law Center, who want to keep their donors’ identities secret and argued that the state had not shown a compelling reason for the law.

Justice Sonia Sotomayor, writing for the minority, suggested that the majority's ruling could impact donor disclosures in the political sphere, allowing more anonymous money. She said the majority marks disclosure requirements with a "bull's-eye."

She said the court "trades precision for blunt force" and creates a "significant risk that it will topple disclosure regimes that should be constitutional."

Rhode Island Democratic Sen. Sheldon Whitehouse, a longtime advocate for campaign finance reform, had urged the court to leave the California ruling in place.

"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," he said in a statement Thursday.

Americans for Prosperity Foundation said the ruling will ensure privacy for those who want to make donations without worry of public pushback.

"Today's decision protects Americans from being forced to choose between staying safe or speaking up," said the group's CEO, Emily Seidel. "Especially given how polarized our country has become, the work of addressing injustice and advocating for change is hard enough without people facing fear of harassment and retaliation from the government and from potentially violent opposition."

### **Fight over freedom of speech**

Derek L. Shaffer, a lawyer for the groups, told the justices during oral arguments that the state requirement "casts a profound nationwide chill" on the freedom of speech and association "for no good reason." He noted that the information had only been used in a "handful of investigations." And that the state, which promised to keep the information confidential had, in the past, inadvertently disclosed it.

The rule represents a "totally gratuitous First Amendment violation," Shaffer said.

Aimee Feinberg, a lawyer for California, argued that the information was important for state charity regulators to evaluate complaints and determine if there is any self-dealing going on or fraud that might warrant a formal investigation.

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

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 rule “is substantially related to an important state interest in policing charitable fraud.”

## **Dark money fears**

So-called “dark money” is already a potent force in politics. Anonymous spending in federal elections topped a record \$1 billion in the 2020 election, according to a tally by OpenSecrets, a nonpartisan organization that tracks money in politics.

At one point, spending in Republican politics by Koch-aligned groups rivaled the hundreds of millions spent by the Republican National Committee during a typical election cycle. The Koch operation has engaged in a major reset of its priorities in recent years, moving away from the GOP brand in the Trump era.

In its brief, American for Prosperity Foundation said a court ruling that allowed it to keep its donors shielded from the California attorney general would not jeopardize the disclosure mandated by campaign finance or tax laws.

Americans for Prosperity Foundation filed suit 2014 to challenge the state’s policy. At the time, Kamala Harris, now vice president, was California’s attorney general and responsible for overseeing charity fraud cases.

Other political players, however, made no secret of their hopes that the justices would apply their ruling broadly to electoral matters.

“Freedoms of speech and association deserve the same rigorous protection in the context of elections as they do in other contexts,” the influential US Chamber of Commerce argued in its brief to the court.

## **Disclosure battles**

Donor disclosures have become the latest front in the campaign finance wars in Washington.

For instance, the Democrats’ marquee voting rights and campaign finance legislation, the For the People Act, includes provisions that would require public disclosure of many larger donors to nonprofits active in politics.

But Republicans have blocked the bill’s consideration in the Senate, and the chamber’s top Republican, Minority Leader Mitch McConnell remains a staunch foe of efforts to unmask contributors.

The Kentucky senator also has co-authored legislation that aims to make permanent a rule instituted by the Trump administration that dropped the requirement that some nonprofits disclose their donors’ identities to the IRS.

The Supreme Court long has upheld donor disclosure in election-related spending as serving the public interest. Even in its blockbuster 2010 ruling in *Citizens United v FEC*, paving the way for unlimited independent spending by corporations in elections, the justices ruled 8-1 to retain disclosure requirements.