Courthouse News Service

High Court Nixes California Collection of Donor Info From Political Nonprofits

Brad Kutner

July 1, 2021

In a closely watched case for nonprofit political groups that want privacy for their supporters, the U.S. Supreme Court on Thursday struck down a California law that says groups seeking tax-exempt status must tell the state the names of some of their biggest donors.

California has long insisted that it will not share the information it gathers, and legislative efforts aimed at beefing up security abound, but the state's own history of data vulnerabilities undercut those assurances.

A 6-3 conservative majority of the high court focused on that vulnerability in striking the law down as unconstitutional Thursday.

"Given the amount and sensitivity of this information harvested by the state, one would expect Schedule B collection to form an integral part of California's fraud detection efforts," Chief Justice John Roberts wrote for the majority. "It does not. To the contrary, the record amply supports the District Court's finding that there was not 'a single, concrete instance in which pre-investigation collection of a Schedule B did anything to advance the attorney general's investigative, regulatory or enforcement efforts.'"

The data collection was also fraught with examples of lax control. When the conservative Americans for Prosperity Foundation filed its 2014 case, an amicus brief by a group on the opposite side of the political spectrum, the American Civil Liberties Union, found nearly 1,800 confidential disclosure forms on the website for the State Registry of Charitable Trusts. Thirty-eight of these were discovered on the eve of trial, and some had been up since at least 2012.

"'By altering the single digit at the end of the URL' corresponding to each file on the Registry website, Petitioner's expert witness 'was able to access, one at a time, all 350,000 of the Registry's confidential documents,'" the ACLU wrote, quoting from the trial record.

The names of donors appear on Schedule B tax forms that nonprofit organizations file with the IRS, listing the names and addresses of individuals who contributed $5,000 or more in a given tax year. Though the IRS does not include Schedule B forms among the documents it makes available for public inspection, the California Department of Justice has said its duty to police charitable fraud and self-dealing justify giving it blanket access to the filings.

At the time the suit was filed, the California Justice Department was led by now-Vice President Kamala Harris.

A federal judge ruled against the state in 2016, but the San Francisco-based Ninth Circuit reversed two years later, setting the stage for Supreme Court oral arguments in April.

On appeal, the challenge by the Americans for Prosperity Foundation, the charitable arm of Charles and David Koch's libertarian advocacy group Americans for Prosperity, was consolidated with that of the Thomas More Law Center.

"Once the state posts donors' personal information on the internet, it remains public forever and puts donors' and their families' privacy at risk," Kristen K. Waggoner, an attorney with Alliance Defending Freedom, wrote in a 2019 petition to the high court.

The majority was sympathetic to that argument in Thursday's ruling, part of the high court's final release of opinions for this term.

"When it comes to 'a person's beliefs and associations,' '[b]road and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution,'" Roberts wrote, citing the court's 1971 ruling in *Baird v. State Bar of Arizona*. "We understand this Court's discussion of rules that are 'broad' and 'broadly stifle' First Amendment freedoms to refer to the scope of challenged restrictions—their breadth—rather than the severity of any demonstrated burden."

California had argued that the burden on nonprofit groups was not a substantial one because the data being collected was already being sent to the IRS as part of tax filings, but Roberts was unpersuaded and also said it was "irrelevant" whether some donors might not mind disclosing their identities to the state.

The chief justice ultimately found that California's donor law "was not narrowly tailored to the state's objective."

But in a dissenting opinion, the court's liberal justices pushed back on the majority's reasoning.

Justice Sonia Sotomayor, joined by Justices Elena Kagan and Stephen Breyer, wrote that the court has long held parties don't have standing to sue if the complaint asserts only a "subjective 'chill'" on free association rights.

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

The Barack Obama appointee added, "It does not matter if not a single individual risks experiencing a single reprisal from disclosure, or if the vast majority of those affected would happily comply. That is all irrelevant to the Court's determination that California's Schedule B

requirement is facially unconstitutional. Neither precedent nor common sense supports such a result."

In a statement, Americans for Prosperity Foundation CEO Emily Seidel praised the high court's ruling as a decision that will protect Americans from "being forced to choose between staying safe or speaking up."

"The ability to maintain one's privacy makes it possible for people to join together in causes and movements," she said. "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."

California Attorney General Rob Bonta expressed his disappointment in a statement Thursday.

"Stripping our office of confidential access to donor information – the same information about major donors that charities already provide to the federal government – will make it harder for the state to fight fraud and prevent the misuse of charitable contributions," he said. "Despite this unfortunate news, we will continue our work to ensure that California's nonprofits are following the law, and that charitable assets are protected."

Praise for the decision came from groups on both sides of the aisle that voiced concern over the data collection.

"On cusp of Independence Day, #SCOTUS vindicated that most cherished American freedom: the freedom of association—including right not to have the govt bother you about your associations, or facilitate neighbors' harassment of you for them," Ilya Shapiro, vice president of the libertarian Cato Institute, wrote in a tweet posted shortly after the ruling was issued.

Brian Hauss, staff attorney with the ACLU, similarly said the ruling "affirms the right of people to associate anonymously, where the government cannot show that it needs disclosure to further an important interest."

But not everyone was pleased by the ruling. Gautam Hans, law professor at Vanderbilt University and founder of the school's Stanton Foundation First Amendment Clinic, slammed the precedent used in the majority opinion, specifically the court's 1958 decision in *NAACP v. Alabama* striking down a state law requiring the civil rights group to disclose the names of its members.

"I will have to do a lot of screaming into the void today to deal with the fact that the Court effectively treats as equivalent the suffering of NAACP members during the 1950s to the *potential* — not even alleged — suffering of rich donors who buy elections," he wrote on Twitter, echoing Sotomayor's dissenting opinion.

"Justice Sotomayor says it in a much more measured way than me, of course," he added.

But others thought the *NAACP* link was warranted, including attorney Mike DeGrandis of the New Civil Liberties Alliance, which filed an amicus brief in the case.

"A bedrock of the civil rights movement for more than 60 years—has been revitalized," he said in an emailed statement. "In an age of political polarization, it is heartening to know that governments cannot chill our First Amendment civil rights with state-sponsored cancel-culture.

Thursday's release of opinions marked the end of this year's Supreme Court session. The next term begins in October.