



— LEGAL POLICY FOCUS —

Anonymous Giving and Donor Disclosure Laws

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EXECUTIVE SUMMARY

- For a variety of reasons, including personal privacy, religious conviction, and fear of social or economic retribution, some donors to charitable causes will not give if they know that their donations will be made public.
- Under the guise of greater political transparency, some politicians have sought to reveal the identities of anonymous donors to certain social causes, including gifts to 501(c)3 charitable organizations that engage in public policy work.
- Forced donor disclosure negatively affects nonprofits across the ideological spectrum, from the left-leaning American Civil Liberties Union to the more conservative New Civil Liberties Alliance, as well as both Planned Parenthood Federation of America and the National Right to Life Education Foundation.
- Forcing nonprofit organizations to reveal personal information about their donors threatens the fundamental right of freedom of association protected by the First Amendment to the United States Constitution.

MORE INFORMATION

What You Should Know

Anonymous donors have played significant roles in a variety of social causes and movements throughout American history, including in the fight for American independence, the anti-slavery movement, the women’s suffrage movement, and the civil rights movement. Unfortunately, however, anonymous charitable giving is today under attack by politicians who want to force nonprofits to turn over private donor information to the state—in some cases for publication on the internet.

Why You Should Care

- **Donor disclosure laws discourage broad-based civic participation.** Many donors simply will not give unless they can keep their gifts confidential. Forced disclosure undermines donors’ reliance on anonymity and, in turn, threatens the ability of charities and nonprofits to rely on those donors.
- **Exposing anonymous donors puts those donors at risk.** In the era of “cancel culture,” disclosure laws put donors at risk of doxxing,¹ cyber-bullying, and serious social and economic reprisal.
- **Donor disclosure laws violate the First Amendment.** The right to associate with groups or causes for the advancement of beliefs and ideas is a core American value protected by the First Amendment to the U.S. Constitution. That right is threatened by laws that put people at risk by exposing affiliations with unpopular causes.

Background

America is the most generous nation in the world. In 2019, Americans donated **\$449.64 billion** to charities and nonprofit organizations and causes, supporting everything from direct social services to medical research and the arts. By giving to causes in which they believe, Americans exercise some of their most cherished constitutional rights: freedom of speech, freedom of association, and freedom of religion.

¹ In recent years “doxing—publishing private information about people online, generally with the intent of threatening them—has become part of the underbelly of politics.” Rachel Kurzius, *Why do these activists publish people’s addresses but fear the same treatment?*, WASH. POST MAG., Jan. 9, 2019, available at https://www.washingtonpost.com/lifestyle/magazine/why-do-these-activists-publish-peoples-addresses-but-fear-the-same-treatment/2019/01/08/83c51336-fca4-11e8-862a-b6a6f3ce8199_story.html

For a variety of reasons, many donors prefer to contribute only anonymously. Some do so pursuant to the dictates of their faith.² Some donors give anonymously to keep the attention focused on the recipients of the gifts (the charities and those they serve).³ Others give anonymously to avoid unwanted solicitations from other charities. And some prefer to keep their donations private out of fear that their association with certain causes will lead to social or economic sanction.

History of Anonymous Giving

Anonymous participation in social and charitable causes has a long and honorable tradition in this country. To cite just two examples:

- The women’s suffrage movement was **underwritten**, in part, by contributions from anonymous donors, many of them women.⁴ Some of these donors publicly supported other causes but, for a different reasons, chose to donate secretly to the cause of women’s suffrage.
- Anonymous contributions were the leading source of support for LGBTQ causes and groups between 1970 and 2010.⁵ No doubt, part of the motivation for anonymity was concern about the potential for violence and harassment. On the other side of this issue, owners of businesses who donated to groups that opposed gay marriage have been the targets of boycotts⁶ and other forms of social and economic disfavor.⁷

Freedom of Association

The First Amendment protects the right to participate in and speak out about causes—and to do so anonymously. See ***McIntyre v. Ohio Elections Comm’n***, 514 U.S. 333, 341-42 (1995) (government may not require the author of political pamphlets to

2 PHILANTHROPY ROUNDTABLE, PROTECTING DONOR PRIVACY: PHILANTHROPIC FREEDOM, ANONYMITY AND THE FIRST AMENDMENT at 3-4, available at https://www.philanthropyroundtable.org/docs/default-source/default-document-library/protecting-philanthropic-privacy_white_paper.pdf?sfvrsn=566a740_6 (explaining that Judaism, Christianity, and Islam all encourage anonymous giving as the most selfless form of charity).

3 Keely Lockhard, *George Michael’s Incredible Acts of Kindness Revealed Following His Untimely Death*, THE TELEGRAPH (Dec. 26, 2016), available at <https://www.telegraph.co.uk/news/2016/12/26/george-michaels-acts-kindness-revealed/> (describing the late singer George Michael’s wish that his generous charitable giving be kept anonymous so that attention would focus on the important work of the charities rather than him).

4 JOAN MARIE JOHNSON, *FUNDING FEMINISM: MONIED WOMEN, PHILANTHROPY, AND THE WOMEN’S MOVEMENT, 1870-1967* (2017); ARMOND FIELDS, KATHARINE DEXTER MCCORMICK: PIONEER FOR WOMEN’S RIGHTS at 107-08 (2003); SUSAN GOODIER & KAREN PASTORELLO, *WOMEN WILL VOTE: WINNING SUFFRAGE IN NEW YORK STATE* at 125, 173 (2017).

5 ANTHONY BOWEN, *FORTY YEARS OF LGBTQ PHILANTHROPY: 1970-2010*, 4, 19 (Jan. 5, 2012), available at http://lgbtfunders.org/wp-content/uploads/2018/04/40years_lgbtqphilanthropy.pdf

6 Spencer Kornhaber, *Waking Up to Coachella’s Conservative Tinge*, THE ATLANTIC, Jan. 13, 2017, available at <https://www.theatlantic.com/entertainment/archive/2017/01/coachella-conservatism-philip-anschutz-aeg-live/513092/>

7 “When Mozilla CEO Brendan Eich donated to California’s Proposition 8 in 2008, he may have considered himself in good company—after all, back then Barack Obama was opposed to gay marriage. But six years later, Eich was forced to resign when the contribution became public.” Carrie Lukas, *Anonymity More Important Than Ever For Charitable Giving*, FORBES, Feb. 15, 2021, available at <https://www.forbes.com/sites/carrielukas/2021/02/15/anonymity-more-important-than-ever-for-charitable-giving/?sh=1345990d64df>

reveal his or her name).

During the 1950s, the **National Association for the Advancement of Colored People (NAACP)** was at the forefront of the American civil rights movement. Unfortunately, many of its members faced backlash and reprisals from Southern whites who opposed the organization's efforts to dismantle Jim Crow segregation.

In 1956, in the middle of the Montgomery Bus Boycott, the Attorney General of Alabama brought suit in state court to enjoin the NAACP from conducting further activities in Alabama. As part of this litigation, the state sought to compel the NAACP to turn over the names and addresses of its Alabama

members. The NAACP refused, arguing that revealing this information would put its members at risk and chill membership in the organization.

A unanimous United States Supreme Court agreed with the NAACP, ruling that the First Amendment prohibited the government from forcing the civil rights group to turn over its membership lists. **NAACP v. Alabama**, 357 U.S. 449 (1958). The Court reasoned that past revelation of NAACP membership had, indeed, resulted in "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility" and that compelled disclosure could "induce members to withdraw [from the organization] and dissuade others from joining." *Id.* at 462-63. The Court, thus, concluded that the state's demand violated the First Amendment right to freedom of association.⁸

Two years later, the Supreme Court examined a challenge to an Arkansas statute that compelled all teachers in public schools or state funded colleges to report annually every organization to which they belonged or contributed to regularly over the past five years. **Shelton v. Tucker**, 364 U.S. 479 (1960). According to the record, a private individual intended to obtain lists of teachers' associational memberships from the government in order to "eliminat[e] from the school system" supporters of

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The fight for American independence, the abolition of slavery, women's suffrage, and civil rights, all depended, in part, on the support of anonymous contributions.
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⁸ The Court explicitly rejected Alabama's argument that any repressive outcome flowed not from state action, but from private community pressure. "The crucial factor," the Court noted, "is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the production order that private action takes hold." 357 U.S. at 463.

organizations such as the American Civil Liberties Union. *Id.* at 486 n.7. The Court struck down the state disclosure requirement, explaining that the “unlimited and indiscriminate sweep of the statute” deprived teachers of their right to freedom of association. *Id.* at 490.

In upholding First Amendment associational rights, the Court has not drawn lines between members of organizations and contributors. Rather, it has treated them interchangeably, holding that the right to advocate includes the right to “pool money through contributions” in order to “join together ‘for the advancement of beliefs and ideas.’” *Buckley v. Valeo*, 424 U.S. 1, 65-66 (1976). See also *Bates v. Little Rock*, 361 U.S. 516, 518 (1960) (reversing convictions for failure to comply with a city ordinance that required disclosure of “dues, assessments, and contributions paid, by whom and when paid”); and *United States v. Rumely*, 345 U.S. 41 (1953) (setting aside a contempt conviction of an organization official who refused to disclose the names of those who made bulk purchases of books sold by the organization).

Disclosing a person’s identity to the government “necessarily results in a surrender of that anonymity” even where the person’s identity is not disclosed to the general public. *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 166 (2002). Moreover, once a donor’s name and personal information are in the hands of the government, it goes without saying that such information is vulnerable to disclosure through public records requests, hacking, and leaks.

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*Freedom of association
is a core American value
protected by the First
Amendment to the U.S.
Constitution.*

Recent Attacks on Anonymous Giving

In recent years, under the guise of greater political transparency, activists and some politicians have sought to reveal the identities of donors to certain social causes, including gifts to 501(c)3 charitable organizations that engage in public policy work. Such disclosure requirements target the non-campaign activity of nonprofit advocacy groups across the ideological spectrum, from the left-leaning American Civil Liberties Union to the more conservative New Civil Liberties Alliance, and from Planned Parenthood Federation of America to the National Right to Life Education Foundation. Politicians in **California**, **New York** and **New Jersey** have been particularly aggressive in their attempts to discover the names and addresses of donors to nonprofits—in

some cases for publication on the internet.

Supreme Court to Weigh in Again

The Supreme Court is currently considering a challenge to California’s donor disclosure policy. California requires any charitable organization that raises money in the state to turn over private information of their major donors (even those that reside outside of California). The Americans for Prosperity Foundation and Thomas More Law Center, two center-right 501(c)(3) organizations, refused to turn over donor information to the state and took then-California Attorney General Kamala Harris to court.

A trial revealed that the state Attorney General’s office **“systematically failed to maintain the confidentiality”** of donor information it collected and that, like members of the NAACP in the 1950s, contributors to these center-right organizations had suffered **“public threats, harassment, intimidation, and retaliation”** on account of their association with the groups. Ultimately, the trial court ruled that California’s bulk disclosure requirement violates the First Amendment, but the U.S. Court of Appeals for the Ninth Circuit reversed. The Supreme Court’s decision is expected this spring.

Arguments Against Donor Disclosure Laws

1. Donor disclosure laws are not necessary to combat fraud. Although proponents of donor disclosure laws claim they are needed to combat fraud, state prosecutors already possess ample power to subpoena donor information in conjunction with specific investigations, making bulk collection by the states unnecessary.

2. Donor disclosure laws discourage giving and put donors at risk. Many causes and social movements (on both the right and the left) depend, in part, on the support of anonymous donations. But, for a variety of reasons, including personal privacy and religious conviction, many donors will not give if they know that their donations will be made public. In the era of doxxing, cyber-bullying, and “cancel culture,” the risk of public exposure for donors cannot be overstated.

Conclusion

The right to choose how and where to participate in American civic life is fundamental to the First Amendment right of free speech and free association. Donor disclosure laws constitute an unwarranted government intrusion into the exercise of those rights, with potentially dire consequences for donors and the causes they choose to support.