NO. 19-255

IN THE

Supreme Court of the United States

THOMAS MORE LAW CENTER,

Petitioner,

v.

XAVIER BECERRA, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE PETITIONER THOMAS MORE LAW CENTER

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QUESTIONS PRESENTED

1. Whether exacting scrutiny or strict scrutiny applies to disclosure requirements that burden non-electoral, expressive association rights.

2. Whether California's disclosure requirement violates charities' and their donors' freedom of association and speech rights facially or as applied to the Law Center.

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE

Petitioner is Thomas More Law Center. Respondent is Xavier Becerra, successor to Kamala Harris as Attorney General of the State of California. In the Ninth Circuit, Petitioner's case was combined for decision with Americans for Prosperity Foundation's similar lawsuit against Respondent.

Petitioner Thomas More Law Center is a Michigan nonprofit corporation with no parent corporation. No publicly held company owns 10% or more of its stock.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit, Nos. 16-56855 & 16-56902, *Thomas More Law Center* v. *Becerra*, judgment entered September 11, 2018, en banc review denied March 29, 2019, mandate withdrawn August 5, 2019.

U.S. Court of Appeals for the Ninth Circuit, No. 15-55911, *Thomas More Law Center* v. *Harris*, judgment entered December 29, 2015, en banc review denied April 6, 2016.

U.S. District Court for the Central District of California, No. 2:15-cv-03048-R-FFM, final judgment entered November 16, 2016.

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JURISDICTION

The court of appeals' judgment was entered on September 11, 2018. Pet.App.1a–50a. The court of appeals denied rehearing en banc on March 29, 2019. Pet.App.104a–45a. Justice Kagan extended the time to file a petition for a writ of certiorari to August 26, 2019, and the petition was filed August 26, 2019. This Court has jurisdiction under 28 U.S.C. 1254(1).

PERTINENT CONSTITUTIONAL, STATUTORY, AND REGULATORY PROVISIONS

The First Amendment to the United States Constitution states, in relevant part: "Congress shall make no law . . . abridging the freedom of speech . . . or the right of the people peaceably to assemble." U.S. Const. amend I.

The Fourteenth Amendment to the United States Constitution states, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV.

Excerpts from relevant California statutes appear at Pet.App.148a–50a, and excerpts from California regulations appear at Pet.App.151a–57a. Excerpts from pertinent federal statutes are included at Pet.App.158a–61a, and excerpts from regulations appear at Pet.App.161a–62a.

INTRODUCTION

All Americans should be free to support causes they believe in without fear of harassment. Yet the California Attorney General's Office demands that all nonprofits fundraising in the State turn over major donors' names and addresses, then leaks that data like a sieve. Indeed, the Office *admits* it cannot ensure donor confidentiality, though technology makes it easier than ever to harass, threaten, and defame.

Sixty years ago, this Court struck down an indistinguishable demand that the NAACP turn over its member list for reasons that apply equally here. First, "effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *NAACP* v. *Alabama*, 357 U.S. 449, 460 (1958). And second, "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as" direct government bans. *Id.* at 462.

As the district court found here, a blanket-disclosure policy creates risks to charitable organizations and their donors that chill First Amendment rights. And the Attorney General does so for no compelling reason: his office never uses donor information to launch a fraud investigation, rarely uses the data at all, and can easily obtain the information—and has—in less intrusive ways. Indeed, 47 states regulate charities without a blanket-disclosure scheme.

This Court should apply strict scrutiny and hold the Attorney General's overbroad disclosure policy facially unconstitutional. At a minimum, the Court should reinstate the district court's permanent injunction as applied to Thomas More Law Center.

STATEMENT OF THE CASE

I. The Law Center

Thomas More Law Center is a 501(c)(3) public-interest law firm in Ann Arbor, Michigan. J.A.87–88, 90, 93–94, 352–53. It was co-founded by Richard Thompson, the Law Center's president and chief counsel, and Thomas Monaghan, a deeply religious man concerned about the culture's direction, especially on life issues. J.A.85–90. The Law Center's mission is to protect religious freedom, free speech, family values, and the sanctity of human life. J.A.90. All the Law Center's representation is pro bono; its main income source is donations, mainly from mail solicitations. J.A.93–96. Roughly 5% of its donors are California residents. Pet.App.93a.

Due to its mission, the Law Center often litigates issues that divide public opinion, such as legal challenges to pro-life buffer zones, lawsuits against the Affordable Care Act's contraceptive mandate, and defense of marriage between one man and one woman. J.A.95–96, 101, 104. The Law Center also often communicates with the public about these issues, though it does not engage in politics. J.A.102, 141–42.

Those hostile to the Law Center's work have made vulgar calls and sent vile communications to its staff. J.A.100–01, 302, 304–19. An opponent even reported a Law Center attorney to the state bar association, simply for representing the mother of a student who was disciplined for saying that homosexuality was against his Catholic religion. J.A.105–07. And the Law Center has been falsely listed on a "Hate Watch" site for its religious views. J.A.144–45.

II. The Law Center's donors and clients

Since its inception, the Law Center has maintained a privacy policy that memorializes the Center's promise to keep its donors' personal information confidential. J.A.107–08, 297–98. The Law Center supports this promise by requiring all employees to sign a confidentiality agreement, J.A.109–10, 299–301, and refusing to sell its donor list, J.A.122–23. Donors depend on this commitment; as one anonymous cash contributor explained, he did not want to risk having his identity exposed for fear that ideological opponents would hunt him down. J.A.111, 303.

That fear was justified. One Law Center client, Pamela Geller, was the subject of a fatwa and two assassination plots—one in Garland, Texas (shooting) and one in New York (beheading)—for her speech about radical Islamists. J.A.112–13, 234–38, 241–47, 328–30, 341–51. Ideological opponents boasted of having 71 trained soldiers in 15 states prepared to kill her. J.A.114. And because the fatwa targeted not only Ms. Geller but anyone who supported her expression, that threat included the Law Center and its donors. J.A.248–49. Indeed, the Law Center's donor list is "exactly the kind of list" that those trying to harm Ms. Geller would want "to get their hands on directly or through hacking of government electronic records." J.A.250–51.

Clients Mr. and Mrs. Wood's daughter was the victim of disturbing social-media comments after the family refused to allow the daughter to complete a religious lesson plan at her public high school to which Mr. Wood, a former Marine, objected. J.A.130–

31, 339–40. Someone threatened in writing to kidnap, torture, and kill the teenage girl. J.A.339–40. And threats against Mr. Wood led to a visit from the FBI. J.A.358–59.

Client Sally Kern, an Oklahoma State Representative, received death threats and was "inundated with vulgar emails" for speaking publicly about groups promoting same-sex lifestyles. J.A.131–32. During one tumultuous week, she received 30,000 hateful emails and calls, forcing the family to eliminate their landline phone. J.A.153–54, 159–60, 331–36. These messages said Kern "should be killed," that "Christianity should be eliminated," and prayed that she would "rot in hell." J.A. 155–56, 331–36. State police assigned a trooper to protect Kern on the House floor and to follow her to and from work. J.A.158. Her family members were verbally attacked and wrongly accused of KKK membership. J.A.160.

The National Organization for Women boycotted Domino's Pizza, the business owned by the Law Center's co-founder and largest donor, Tom Monaghan, based on his pro-life views. J.A.438–40, 446–47. And after the Law Center considered filing a lawsuit on behalf of the family of a young boy murdered by a gay man, an advocacy group designated Monaghan No. 1 on a list of people it "considered to be antigay." J.A.441–43.

In short, donors and supporters would be reticent to reveal publicly their identities.

III. California demands the Law Center disclose its Schedule B donors.

Every charity that desires to solicit donations in California must register with the State's Office of Registry of Charitable Trusts and file annually certain forms, including IRS Form 990. Cal. Code Regs., tit. 11, § 301. Form 990's Schedule B details the name, address, total contributions, and types of donations of any contributor that donated more than $5,000 or 2% of the organization's budget during the tax year. IRS Form 990, Sch. B at 1, J.A.390. Unlike political committees, which must make their donor lists publicly available, public charities may keep their donors' identities private. And federal law prohibits the disclosure of donor lists to state officials "for the purpose of . . . regulating the solicitation or administration of the charitable funds or charitable assets of such organizations." 26 U.S.C. 6104(c)(3).

California has never received a complaint against and has never pursued an investigation involving the Law Center. J.A.266–69, 286. But bypassing the federal prohibition, California began regularly demanding in 2012 that the Law Center produce its Schedule B (for tax year 2010). J.A.124–26, 389–98. The Law Center has never filed an unredacted Schedule B in the 40 states that require the Law Center to submit its Form 990. J.A.121–22. And the Law Center refuses to disclose its Schedule B to California because the Law Center keeps its promise of donor confidentiality and respects its donors' concerns about repercussions. J.A.117–18. The Law Center keeps its own copies of its Schedules Bs under lock and key, limiting access to its chief counsel and board members on a need-to-know basis. J.A.122.

Rather than address the problem of the more than 170,000 charities that solicit in California without having *ever* registered, J.A.255–56, the Attorney General's Office has focused its regulatory resources on a few, law-abiding charities like the Law Center. Understandably, this has informed the Law Center's belief that the then-California Attorney General used the disclosure requirement to retaliate against the Law Center because it took positions adverse to her. J.A.118–19. The Attorney General was on the opposite side of many legal issues on which the Law Center advocated. J.A.360–63. And the Center had "zero" comfort giving her unredacted Schedule Bs. J.A.132–34.

After the Law Center's outside counsel asked for the overbroad order's legal basis, J.A.126–28, 337–38, the Attorney General's threats escalated, promising to revoke the Law Center's charitable license and to impose personal fines against the Law Center's directors, officers, and tax preparers unless the Law Center handed over its Schedule B within 30 days. J.A.128; Pet.App.181a–83a. The Law Center's outside counsel again objected, J.A.128–29; Pet.App.184a–86a, but the Attorney General never responded. J.A.129.

IV. The dangers of donor disclosure.

Dr. Paul Schervish, the Law Center's unrebutted expert on anonymous donor behavior, explained that donors demand that their information be kept confidential for two primary reasons: (1) to avoid being "inundated with requests" from other charitable organizations, and (2) "they reasonably fear that disclosure of their names and addresses" may "lead to harassment." J.A.188–90.

That harassment can range from "demeaning, vulgar, [and] insulting" communications to life-threatening behavior. J.A.199. These risks are exacerbated by technology: "you cannot withdraw or take back what has gotten out there." J.A.200–01. Dr. Schervish's conclusions about donor behavior apply not only to wealthy but small donors too. J.A.191; accord, *e.g.*, J.A.265–66.

Former Representative Kern had firsthand experience with this. Her ideological opponents contacted and harassed not only Kern and her family members but many of her donors. J.A.162–63. Predictably, some donors quit contributing. J.A.163. And the expectation is the same for Law Center donors: "they would be reluctant to give if they felt like [they're] going to receive harassment for giving." J.A.165.

Dr. Schervish concluded the Law Center's donors "have a legitimate and reasonable fear that they will be harassed [and] intruded upon[ ] if their names are revealed on Schedule B to the Attorney General of

California." J.A.210.[1] The Law Center and its donors have a religious orientation and are involved in "more controversial areas than even some of the political areas that law firms and charities participate in." J.A.449–50. The "religious dimension" of the Law Center's work and mission "intensifies the violence in many instances that donors would face." J.A.451.

V. California's Charitable Trust Section and Registry

Housed within the California Attorney General's office, the Charitable Trust Section maintains the Registry of Charitable Trusts, protects charitable assets, and investigates charitable abuses. J.A.254–55. There are either 118,000 or 122,000 charities on the Registry—depending on which California official you ask, J.A.256, 284—yet only 41 staff members to process all the information and protect 370,000 confidential documents in a database that includes more than two million records, J.A.282–84. Any charity that desires to solicit California donors must register and provide annual reports. J.A.256, 462. Charitable organizations that fail to comply are barred from soliciting contributions in California. J.A.257.

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[1] Dr. Schervish did not interview Law Center donors because doing so risked the same chill as disclosing donors' information. He did review the extensive record of death threats, murder attempts, economic and social ostracism, and other harm done to those associated with the Law Center. J.A.209, 225–26.

To protect all this confidential information, the Attorney General does not rely on state employees. Instead, the Attorney General uses students, seasonal workers, and contractors to do much of the Schedule B identification and scanning. J.A.487–88, 492. One defense witness characterized this staff as "fairly low-level clerks." J.A.470. Nothing stops these workers—or other employees—from downloading, emailing, printing, or taking original Schedule Bs. J.A.497–98. Volume compounds the problem. The Registry processes more than 60,000 charity-registration renewals each year, most during two peak periods in the spring and fall. J.A.486–88. All the scanned documents are uploaded to the Internet, increasing the risk of inadvertent disclosures and hacking. J.A.489–90.

Despite all this, there is no California law or regulation that penalizes the unauthorized disclosure of Schedule B information with a fine or penalty, either civil or criminal. J.A.285–86. There is no written Registry requirement directing personnel on how to remedy a data breach. J.A.286. There is not even a written requirement that personnel prepare a report if they learn about a confidential Schedule B being uploaded or disclosed. J.A.286. There is also no employee discipline for publicly posting or sharing confidential information. J.A.472–73, 492–93. The Registry's view is that charities are responsible for looking at their *own* online Registry entries and ensuring the Registry hasn't posted anything confidential. J.A.494–95. But even if a charity discovers the Registry disclosed its donors, that information is already in the public domain and stays there forever.

On July 8, 2016, California promulgated a new regulation that merely declared donor information "confidential." Cal. Code Regs., tit. 11, § 310(b), J.A.407. The new Confidentiality Regulation does not change the Attorney General's pre-existing, toothless policies and practices. J.A.476. They are identical. Unlike federal law, which imposes harsh criminal liability for willful disclosure or publication of tax-return information, *e.g.*, 26 U.S.C. 7213, California imposes no criminal penalties, no prescribed discipline, and no mandatory reporting of breaches to charities or donors. J.A.285–88. Malicious "hacking" of records and employee pilferage of Schedule Bs remain as possible as before. J.A.478–79.

The Attorney General accepts the disclosure risk of this highly sensitive and federally protected donor information despite having no prophylactic need for it. Charitable Trust Section auditors and investigators can obtain data about a charitable organization in many ways without imposing a blanket disclosure requirement for Schedule Bs, including (1) Schedule Ls (interested-party transactions), (2) audited financial statements (for charities that have more than $2 million in annual revenue), and (3) even Schedule Bs themselves, obtained through a targeted informal request, audit, or investigative subpoena. J.A.261–62, 267–68, 465–67. When Joseph Zimring—one of the Section's investigative attorneys and an Attorney General trial witness—was asked how many times he had used a charitable organization's Schedule B in the last year, he couldn't provide even one example. J.A.273.

Steven Bauman, the Registry's supervising investigative auditor since 2001, J.A.456, admitted that the Charitable Trust Section has never used a Schedule B "as the triggering document to open up an investigation," J.A.457. The Section only looks at the Schedule B *after* a complaint arrives. J.A.462–63. Bauman could identify only five instances in 540 cases—less than 1%—in which a Schedule B was even relevant. J.A.459–60. He conceded that no Schedule B was ever listed as an "important document" in any investigation. J.A.458. And Bauman has successfully investigated charitable organizations without having their Schedule Bs in advance. J.A.463–64.

Unsurprisingly, 47 states and the District of Columbia effectively regulate charities that solicit in their jurisdictions without blanket donor disclosure. Br. of Arizona, *et al.* at 5–8, *Americans For Prosperity Found.* v. *Becerra*, No. 19-251 (Sept. 25, 2019). And as California admitted at trial, "[t]here are other ways to get the information" on Schedule Bs, they just may be "not as efficient as having the information in advance." J.A.294–95, 460–61. Proving that point, before August 2010, California did not even send deficiency letters to organizations that failed to submit their Schedule Bs. J.A.419–21, 463–64.

Worse, California could not keep the data confidential. While telling the Ninth Circuit in July 2014 that "there is no evidence to suggest that any 'inadvertent disclosure' has occurred or will occur," Answering Br. of Appellee at 33, *Center For Competitive Politics* v. *Harris*, No. 14-15978, California knew such disclosure had taken place in July 2012, J.A.402, October 2013, J.A.366, and December 2013, J.A.385–86. And that was just the tip of the iceberg.

VI. California leaks confidential information like a sieve.

Dr. James McClave, an expert data analyst, was tasked with determining whether California's lax policies could ensure Schedule B confidentiality. J.A.415–16. He found 1,740 "confidential" Schedule Bs on the Registry's website that could be easily accessed by the public, either by clicking a link or changing a single URL digit. J.A.423–31, 435–36. (Seventy-five of these were posted after a charitable organization submitted Schedule Bs in response to a California deficiency letter. J.A.427–29.) Based on Dr. McClave's analysis, more than 400,000 confidential documents on the Registry's website were publicly accessible. J.A.433.

Even after the Registry "fixed" the problem, Dr. McClave quickly accessed 40 confidential Schedule Bs left unprotected. J.A.433–34. He was confident he could find additional confidential documents on the Registry's website because the problems had *not* been resolved. J.A.435; accord, *e.g.*, J.A.365–88, 399–406.

Sure enough, after the trial in *Americans for Prosperity Foundation* v. *Beccera*, the Registry tried to fix its disclosure problems through manual inspections and daily searches. J.A.263–64. But the system was still vulnerable to hackers. J.A.478–84. When asked, the Registry's registrar confirmed that he could *not* guarantee that any charitable organization's confidential Schedule Bs would be safe from being uploaded or otherwise disclosed in the future. J.A.289–90; accord J.A.295.

VII. Proceedings

The Law Center sued to enjoin the Attorney General's blanket-disclosure policy, arguing that it violated the Law Center's and its donors' freedom of association both facially and as-applied. The district court issued a TRO, Pet.App.97a–103a, then a preliminary injunction, because persons associated with the Law Center had experienced threats and harassment, and the Attorney General had successfully regulated charities for years without collecting Schedule Bs. Pet.App.94a–96a.

The Ninth Circuit reversed in part. As to the Law Center's facial claim, the court believed it was bound by *Center for Competitive Politics* v. *Harris*, 784 F.3d 1307 (9th Cir. 2015), which upheld the Attorney General's disclosure scheme. Pet.App.79a. As for the as-applied challenge, the panel held that the Law Center failed to show "any actual burden on First Amendment rights flowing from the Attorney General's" policy. Pet.App.82a–85a. But recognizing a risk to donors, the court left in place a limited injunction that prohibited public disclosure of Schedule Bs. Pet.App.86a–88a.

On remand, the district court conducted a four-day bench trial and granted the Law Center a permanent injunction on its as-applied claim. Pet.App.51a–67a. The court found that the Attorney General's collection of Schedule Bs did not substantially assist the monitoring of charities and would likely chill the Law Center's donors. *Ibid.* Moreover, the irreparable harm to the Law Center's and its donors' freedom of association and speech "far outweighed" the Attorney General's interest in convenience. Pet.App.66a.

On appeal again, the Ninth Circuit reversed, ordering judgment for the Attorney General. Pet.App.43a–44a. The court claimed to apply "exacting scrutiny," Pet.App.8a, but considered only whether the blanket-disclosure rule was substantially related to a sufficiently important government interest. Pet.App.16a. The panel declined to apply strict scrutiny or any form of narrow-tailoring analysis, Pet.App.17a–18a, disregarded trial-court fact finding and substituted its own, Pet.App.33a–43a, and required the Law Center to prove that harassment of its donors was "a foregone conclusion" of disclosure. Pet.App.37a. Ignoring ample evidence of the Registry's systematic incompetence and the Attorney General's lack of effort to thwart hacks, punish leaks, or prevent the improper accessing of Schedule Bs, the panel concluded that the Law Center could not show a reasonable probability of public disclosure. Pet.App.37a–43a.

The Ninth Circuit denied rehearing en banc over a five-judge dissent. Pet.App.107a–08a. The dissenters would have required the Attorney General to prove both a compelling interest in requiring blanket disclosure and that such a rule was narrowly drawn to prevent the supposed evil, i.e., strict scrutiny. Pet.App.108a, 126a. And the dissenters, decrying the panel's appellate fact-finding, would not have overturned the district court's findings that (1) it was reasonably likely donors' names would be publicly disclosed, and (2) donors would face harassment as a result. Pet.App.122a–25a.

SUMMARY OF THE ARGUMENT

The Thomas More Law Center is entitled to a permanent injunction against the Attorney General's overbroad, no-suspicion, disclosure rule because the rule cannot survive strict scrutiny.

Free association is a fundamental right that protects organizations and their supporters from the potentially devastating consequences of public disclosure. That is why this Court, in *NAACP* v. *Alabama* and its progeny, requires the government to prove that a compelled-disclosure scheme is narrowly tailored to advance a compelling interest.

The Attorney General's compelled-disclosure rule fails strict scrutiny in every application because the rule creates an unnecessary risk of chilling speech. The Attorney General almost never uses Schedule B information for any reason and can easily obtain it in the rare situation where donor information is used at all. The Attorney General's only interest in collecting every charitable organization's Schedule B is, at best, future efficiency. (That's why 47 states successfully oversee charities without a blanket-disclosure scheme.) Governmental efficiency is not a compelling justification to infringe First Amendment rights.

The Attorney General's one-size-fits-all rule also fails strict scrutiny because it is not tailored at all—much less narrowly tailored, as the First Amendment requires. California treats thousands of charities as suspected fraudsters rather than employing more precise standards to separate legitimate from illegitimate charities. As the Attorney General's witnesses attest, they virtually never use Schedule B information in enforcement actions.

The Ninth Circuit's analysis illustrates why strict scrutiny is the appropriate test to evaluate compelled donor disclosure outside the electoral context. Its watered-down attempt at exacting scrutiny is distorted and hazardous to First Amendment rights.

Yet even under the exacting-scrutiny test that this Court has used to evaluate the constitutionality of government-compelled disclosure in the electoral context, such as in *Buckley*, the Attorney General's donor-disclosure scheme is invalid. The Attorney General's charity-policing interest is not sufficiently important to justify the mandate's severe burden on free association. The mandate is also a prophylactic measure of convenience that bears no substantial relation to an interest in monitoring charities. At a minimum, the Law Center and similarly situated charitable organizations are entitled to an as-applied exemption because the blanket-disclosure rule is not narrowly tailored and likely to result in disclosure that would subject donors to harassment. Abundant trial evidence proved this point. The Law Center's clients, donors, and staff have faced outrageous abuse, threats, and even assassination plots because of their views.

Finally, compelled donor disclosure in the taxation context is distinguishable. Whereas the IRS requires donor disclosure as part of a government-benefit program, California has no legitimate—let alone compelling—reason to demand this information, especially given the disclosure risks.

This Court should reverse the court of appeals, remanding solely for entry of a permanent injunction.

ARGUMENT

I. California's compelled disclosure of a charitable organization's donors is constitutional only if narrowly tailored to serve a compelling state interest.

A. Free association is a fundamental right closely related to freedom of speech that safeguards charitable donations.

The First Amendment guarantees certain rights necessary for democracy to function. At its core is the "freedom to associate . . . for the common advancement of . . . beliefs and ideas." *Kusper* v. *Pontikes*, 414 U.S. 51, 56 (1973). Free association "lies at the foundation of a free society." *Buckley* v. *Valeo*, 424 U.S. 1, 25 (1976) (per curiam). It promotes "free trade in ideas and beliefs." *Gibson* v. *Fla. Legislative Investigation Comm.*, 372 U.S. 539, 555 (1963). And it does so no matter an idea's "truth, popularity, or social utility." *NAACP* v. *Button*, 371 U.S. 415, 444–45 (1963). Given free association's fundamental importance "to the preservation of our democracy," *Gibson*, 372 U.S. at 558, "the ability of like-minded individuals to associate for the purpose of expressing commonly held views may not be curtailed." *Knox* v. *Serv. Emps. Int'l Union*, 567 U.S. 298, 309 (2012).

Freedom of association is "closely allied to freedom of speech." *Shelton* v. *Tucker*, 364 U.S. 479, 486 (1960). It enjoys a "generous zone of First Amendment protection," *In re Primus*, 436 U.S. 412, 431 (1978). This Court has given three main reasons why these freedoms are "highly prized, and need breathing space to survive." *Gibson*, 372 U.S. at 544 (citation omitted).

First, group association enhances "[e]ffective advocacy of both public and private points of view, particularly controversial ones." *NAACP* v. *Alabama*, 357 U.S. at 460. Groups are better than individuals at "advancing ideas," "airing grievances," *Bates* v. *City of Little Rock*, 361 U.S. 516, 523 (1960), and pursuing "lawful private interests," *NAACP* v. *Alabama*, 357 U.S. at 466, including protected speech, assembly, petition, and religious exercise, *Roberts* v. *U.S. Jaycees*, 468 U.S. 609, 618 (1984).

Second, those espousing minority views are often "placed in fear of exercising their constitutionally protected rights." *Allee* v. *Medrano*, 416 U.S. 802, 814–15 (1974). Joining together allows like-minded persons to advocate on "social, economic, educational, religious, and cultural" matters. *Boy Scouts of Am.* v. *Dale*, 530 U.S. 640, 647 (2000). Freedom of association is especially "crucial in preventing the majority from imposing its view on groups that would rather express other, perhaps unpopular, ideas." *Id.* at 647–48. It helps protect First Amendment activity from obstacles a hostile government may impose. *N.Y. State Club Ass'n, Inc.* v. *City of New York*, 487 U.S. 1, 13 (1988).

Finally, "pooling their resources" allows individuals "to amplify their voices" far beyond what they could achieve alone. *FEC* v. *Nat'l Conservative Political Action Comm.*, 470 U.S. 480, 495 (1985) (*NCPAC*). "[F]unds are often essential if advocacy is to be truly or optimally effective." *Buckley*, 424 U.S. at 65–66 (quotation omitted). Donors "add their voices" by giving to groups that promote views they share. *NCPAC*, 470 U.S. at 495.

Soliciting charitable donations is classic expressive association. Charitable appeals "involve a variety of speech interests," including "disseminat[ing] and propagat[ing] . . . views and ideas . . ., advocat[ing] causes," and "persuasive speech seeking support for particular causes or . . . views." *Vill. of Schaumburg* v. *Citizens for a Better Env't*, 444 U.S. 620, 632 (1980). The "flow of . . . information and advocacy" available through charitable solicitations, *id.* at 632, is "fully protected speech," *Bd. of Trustees of State Univ. of N.Y.* v. *Fox*, 492 U.S. 469, 474 (1989). "[S]ubsidiz[ing]" charities' expression is First Amendment protected, too. *Janus* v. *Am. Fed'n of State, Cnty. & Mun. Emps.*, 138 S. Ct. 2448, 2464 (2018). Consequently, the First Amendment safeguards charities' ability "to distribute information to every citizen wherever he desires to receive it." *Martin* v. *City of Struthers*, 319 U.S. 141, 146–47 (1943).

B. Donor privacy is built on venerable precedents protecting anonymous advocacy.

The founding generation had deep regard for anonymous advocacy. *McIntyre* v. *Ohio Elections Comm'n*, 514 U.S. 334, 360–71 (1995) (Thomas, J., concurring in the judgment). In England and the American Colonies, authorities used press licensing laws to expose the names of writers, printers, and distributors to "lessen the circulation of literature critical of the government." *Talley* v. *California*, 362 U.S. 60, 64 (1960). Before the American Revolution, "colonial patriots frequently had to conceal their authorship or distribution of literature that easily could have brought down on them prosecutions by English-controlled courts." *Id.* at 65.

Based on these real-world dangers, "some of Thomas Paine's pamphlets were signed with pseudonyms." *Talley*, 362 U.S. at 62 n.3. And his enormously influential work *Common Sense* was originally published anonymously. *Novak* v. *City of Parma*, 932 F.3d 421, 434 (6th Cir. 2019). The *Federalist Papers* were also published under pseudonyms. *Talley*, 362 U.S. at 65. These advocacy pieces are but "the most famous example of the outpouring of anonymous . . . writing that occurred during the ratification of the Constitution." *McIntyre*, 514 U.S. at 360 (Thomas, J., concurring).

Today, some view anonymous advocacy as "pernicious" or "fraudulent," but the founding generation viewed it as "an honorable tradition of advocacy and of dissent." 514 U.S. at 357. In many respects, anonymity was the American norm. *Id.* at 360–71 (Thomas, J., concurring). Thus, the founding generation ratified the First Amendment "to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society." *Id.* at 357. Our nation has only recently "permitted [state] regulation of anonymous speech." *Id. at* 367 (Thomas, J., concurring). This modern innovation "chills speech by exposing anonymous donors to harassment and threats of reprisal." *Del. Strong Families* v. *Denn*, 136 S. Ct. 2376, 2376 (2016) (Thomas, J., dissenting from denial of cert.). Donor-disclosure mandates are a perfect example because they make "group membership less attractive" and impair a "group's ability to express its message," *Rumsfeld* v. *Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47, 69 (2006).

C. The First Amendment protects donors from the devastating consequences of public disclosure.

When individuals respond to charitable appeals, another facet of free-association emerges: the right to "privacy in one's associations," which is "indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Bates*, 361 U.S. at 523. The First Amendment guarantees "privacy of association and belief." *Buckley*, 424 U.S. at 64. Nonprofits have a "strong associational interest in maintaining the privacy of membership [or donor] lists," *Gibson*, 372 U.S. at 555, which this Court treats "interchangeably," *Buckley*, 424 U.S. at 66.

Freedom of association guards donor anonymity and against state requirements to disclose membership. *Roberts*, 468 U.S. at 622–23. This Court "protects against the compelled disclosure of . . . associations and beliefs." *Brown* v. *Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 91 (1982).

It makes no difference whether the state deprives individuals "of *all* opportunities to associate with" their charity of choice. *Kusper*, 414 U.S. at 58 (emphasis added). "Broad and sweeping state inquiries" that "discourage citizens from exercising" their free-association rights violate the First Amendment. *Baird* v. *State Bar of Ariz.*, 401 US. 1, 6 (1971). One example of such an indiscriminate and unconstitutional burden is the "compelled disclosure of affiliation with groups engaged in advocacy," as the First Amendment protects against "subtle governmental interference," not just "heavy-handed frontal attack." *Bates*, 361 U.S. at 523 (cleaned up).

There is nothing light-handed about forcing charities to disclose donors. *NAACP* v. *Alabama*, 357 U.S. at 462. Under *Bates*, forced-donor disclosure is highly suspect. 361 U.S. at 523. And for good reason: "[A] vital relationship [exists] between freedom to associate and privacy in one's associations." *NAACP* v. *Alabama*, 357 U.S. at 462. Donors have "legitimate expectations of privacy" in what they give. *Cal. Bankers Ass'n* v. *Shultz*, 416 U.S. 21, 79 (1974) (Powell, J., concurring). This data reveals "much about a person's activities, associations, and beliefs." *Buckley*, 424 U.S. at 66 (cleaned up). Governments may use this information to target those with disfavored views, as they've done historically. And when donor information intentionally or accidentally becomes public, it often leads to severe forms of (1) harassment, (2) threats of bodily harm, (3) economic reprisals, and (4) public hostility. *Bates*, 361 U.S. at 524; *NAACP* v. *Alabama*, 357 U.S. at 462–63; accord *John Doe No. 1* v. *Reed*, 561 U.S. 186, 201, 208 (2010) (Alito, J., concurring).

Our society is now so polarized that an entire "cottage industry" revolves around leveraging forcibly disclosed donor information to chill free speech and association and "*pre-empt* citizens' exercise of their First Amendment rights." *Citizens United* v. *FEC*, 558 U.S. 310, 482 (2010) (Thomas, J., concurring in part and dissenting in part). These malicious tactics have cost individuals their livelihoods, damaged their property, and put some in fear of their lives. *Id.* at 485.

Anyone with internet access may research disclosed donors and their families, including their contact information, homes, vehicles, and jobs. *John*

Doe No. 1, 561 U.S. at 208 (Alito, J., concurring). The potential for harassment, threats, and physical attacks is limitless. *Ibid.*; *Citizens United*, 558 U.S. at 481 (Thomas, J., dissenting). Our society has reached a tipping point where fear of reprisal "may deter contributions to the point where" minority viewpoints cannot survive. *Buckley*, 424 U.S. at 71.

The irony of the Attorney General's nationwide dragnet is that Schedule B was created to *protect*, not breach, donors' identity and safety. Before Schedule B's creation in 2000, the IRS required donor disclosure on Form 990 itself, on Line 1 d; while that information was not supposed to be publicly disclosed, several releases occurred, prompting Schedule B's creation. Gregory L. Colvin & Marcus S. Owens, *Outline on Form 990 Donor Disclosure*, 35 Exempt. Org. Tax Rev. 408, 408 (2002), https://perma.cc/9BJ7-D78D.

The new Schedule B "provide[d] a means for the IRS to capture the non-public donor information, clearly separate it from the otherwise public Form 990 data, and withhold it from public inspection." Owens, *Outline*, 35 Exempt. Org. Tax Rev. at 408. Yet the Attorney General's blanket-disclosure rule creates the very risk that Schedule B was designed to mitigate. The Registry exposes donor identities and private information *en masse* in an electronic warehouse that has repeatedly shown to be more sieve than vault.

D. *NAACP* and its progeny require the government to prove that a compelled-disclosure scheme is narrowly tailored to advance a compelling interest.

For more than 60 years, this Court has vigorously protected free-speech and free-association rights by applying strict scrutiny to laws that compel disclosure of members or donors outside the electoral context. Those precedents begin with *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

In the 1950s, the NAACP was successfully fighting institutionalized racial discrimination. State governments responded with a new weapon: compelled member disclosure. Hostile states began demanding that, as a condition for operating within their states, the NAACP had to turn over its supporters' names. Government officials understood that many would stop supporting the NAACP if it meant risking reprisal from segregationists. They were right; because of compelled disclosure, the NAACP saw a 50% decline in southern-state memberships between 1955 and 1957. Jack Greenberg, *Crusaders in the Courts* 221 (1994).

The NAACP challenged this blanket-disclosure rule and prevailed. This Court began by recognizing that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association." *NAACP* v. *Alabama*, 357 U.S. at 460 (citations omitted). And "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as" other govern-

ment actions that discourage the exercise of constitutionally-protected rights. *Id.* at 462. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses" views over which there are avid disagreements. *Ibid.*

Although the Court had not yet used the phrase "strict scrutiny" for First Amendment claims, it applied the now-familiar strict-scrutiny rubric. The Court announced that Alabama had to prove an "interest in obtaining the disclosures" that was "compelling." 357 U.S. at 463. And the Court concluded that Alabama had failed to justify forced membership disclosure because less intrusive means could satisfy the State's "exclusive purpose" in demanding membership lists—"to determine whether [the NAACP] was conducting intrastate business." *Id.* at 464. Compare with *Reed* v. *Town of Gilbert*, 576 U.S. 155, 163 (2015) (strict scrutiny requires the government to show that its actions "are narrowly tailored to serve compelling state interests").

Two years later, this Court relied on *NAACP* in vindicating another NAACP chapter's challenge to local member-disclosure laws in Arkansas. *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960). Again, the Court emphasized the government's burden to prove a "compelling" interest. *Id.* at 524. And the Court held there was no relevant correlation between Arkansas' disclosure demand and the imposition of occupational-license taxes. *Id.* at 525. Accord *Gibson*, 372 U.S. at 546 (requiring a government concern "of overriding and compelling state interest").

Soon after, this Court extended these protections to individuals forced to disclose their memberships for employment purposes. *Shelton* v. *Tucker*, 364 U.S. 479 (1960). In striking down the requirement facially on free-association grounds, the Court confirmed that government infringements of the free-association right must be narrowly tailored: the government's purpose "cannot be pursued by means that broadly stifle fundamental liberties [such as free association] when the end can be more narrowly achieved." *Id.* at 488. And this was so "[e]ven if there were no disclosure to the general public." *Id.* at 486. Just one year later, the Court affirmed that the narrow-tailoring requirement also applies to government rules compelling organizational disclosure of associations. *Louisiana ex rel. Gremillion* v. *NAACP*, 366 U.S. 293, 296 (1961) (quoting *Tucker*).

There has been no need for the Court to revisit these non-disclosure cases in recent years. But the Court's other free-association cases generally apply the same rules. *E.g.*, *Roberts*, 468 U.S. at 623 (free-association infringements must serve "compelling state interests" that "cannot be achieved through means significantly less restrictive of associational freedoms"); *Elrod* v. *Burns*, 427 U.S. 347, 363 (1976) (government means must be "least restrictive of freedom of belief and association").

The only standard in this Court's lexicon that incorporates both a compelling interest and a narrow-tailoring requirement is strict scrutiny. Applying that standard here follows this Court's recognition that "measures burdening the freedom of speech or association must serve a 'compelling interest' and must not be significantly broader than necessary to

serve that interest," *i.e.*, "government means must be 'least restrictive of freedom of belief and association.'" *Knox*, 567 U.S. at 313–14 & n.3 (quoting *Roberts*, 468 U.S. at 623, and *Elrod*, 427 U.S. at 363).

E. *Buckley*'s exacting-scrutiny standard is tailored to preventing corruption in electoral processes. It has no application to 501(c)(3) charities since they are barred from election involvement.

The government need only survive exacting scrutiny in election-campaign regulations because it has an important interest in preventing electoral corruption. *Buckley*, 424 U.S. at 66. The "exacting scrutiny" rubric first appeared in *Buckley*. There, the Court explained that certain electoral "governmental interests [are] sufficiently important to outweigh the possibility of infringement" of free association. *Ibid.*; accord *id.* at 71.

Buckley identified three such critical interests: (1) deterring electoral corruption and the appearance of corruption, such as "'buying' of elections" or "undue influence of large contributors" on government officials, 424 U.S. at 70; (2) aiding voters' evaluation of candidates for office, *id.* at 66–67, 68 n.82; and (3) detecting violations of contribution limits, *id.* at 67–68. Given the weighty government interests at stake, the Court excepted the Federal Election Campaign Act's disclosure provisions from strict scrutiny, holding *NAACP* v. *Alabama* "inapposite." *Id.* at 70.

The Attorney General cites no interest of similar "magnitude" here. 424 U.S. at 66. Charities can neither buy elections nor exercise governmental power. Their existence is not subject to popular vote. There are no statutory limits on charitable donations. None of *Buckley*'s ostensibly vital interests apply.

Federal law ensures this. The definition of a tax-exempt organization excludes nonprofits that "*participate in, or intervene in* (including the publishing or distributing of statements), *any political campaign* on behalf of (or in opposition to) any candidate for public office." 26 U.S.C. 501(c)(3) (emphasis added). Donations to charities that violate this restriction are not tax deductible. 26 U.S.C. 170(c)(2)(D). The United States may sue to enjoin wayward charities "from further making political expenditures." 26 U.S.C. 7409(a)(1); accord 26 U.S.C. 7409(a)(2)(B)(i). Based on these severe consequences, charities give political campaigns a wide berth.

Applying *Buckley*'s election-based holding to charities barred from electoral interference—thereby side-lining *NAACP* v. *Alabama* and its progeny—makes little sense. *Buckley* established a disclosure rule for "campaign contributors," *Brown*, 459 U.S. at 98, not nonprofit donors. That "context" matters because the Court "allow[s] States significant flexibility in implementing their own voting systems." *John Doe No. 1*, 561 U.S. at 195. The same is not true of forced disclosure of charities' donors. *Buckley*'s conclusion that disclosure requirements are always "the least restrictive means" of preventing "campaign" evils is election specific, 424 U.S. at 68, unrelated to charitable-oversight efforts.

Transforming *Buckley*'s limited exception for those associated with "minor [political] parties" into a universal disclosure test also contradicts this Court's precedent. *Brown*, 459 U.S. at 94. Over the last 20 years, this Court has consistently taught that *Buckley*: (1) applies "to disclosure requirements in the electoral context," *John Doe No. 1*, 561 U.S. at 196; (2) was designed for "campaign-related activities," *Citizens United*, 558 U.S. at 366 (quoting *Buckley*, 424 U.S. at 64); and (3) regulates only the "compelled disclosure of campaign-related payments," *Buckley* v. *Am. Const. Law Found., Inc.*, 525 U.S. 182, 202 (1999); accord *McCutcheon* v. *FEC*, 572 U.S. 185, 224 (2014) (assuaging political donors' concerns about exposure by suggesting they "contribute unlimited amounts to 501(c) organizations" anonymously instead).

Strict—not exacting—scrutiny is the proper standard here. The Court has never applied exacting scrutiny outside the electoral context and for good reason: courts should not scrutinize *any* disclosure rule imposed by *any* agency in a state's vast bureaucratic network the same as statutes designed to ensure free and fair elections and the functioning of our democracy.

F. At a minimum, compelled-disclosure schemes must be narrowly tailored.

Rather than require the government to prove a "compelling interest," the *Buckley* exacting-scrutiny rubric requires only a "substantial governmental interest[ ]." 424 U.S. at 68. But the Court still recognized a narrow-tailoring requirement; the Court concluded that the disclosure requirements at issue "appear[ed] to be *the least restrictive means* of curbing the evils of campaign ignorance and corruption that Congress found to exist." *Ibid.* (emphasis added).

Because *Buckley* held that the disclosures in that case were *per se* the least restrictive means of addressing the government's concern, the Court had no need to evaluate the narrow-tailoring requirement in later cases involving election-related disclosures. *E.g.*, *John Doe No. 1*, 561 U.S. at 197–98; *Citizens United*, 558 U.S. at 367, 369. And in another, judicial-election case, the Court did not specify whether it was applying strict scrutiny or exacting scrutiny, but it unquestionably required narrow tailoring. *E.g.*, *Williams-Yulee* v. *Fla. Bar*, 575 U.S. 433, 441–42 (2015) (requiring speech limitation to be "narrowly tailored to serve [a] compelling interest").

At a minimum, then, the Attorney General must satisfy narrow tailoring here. If the phrase is to have any substance, it cannot mean forced disclosure of nationwide donors for every charity that desires to solicit in California.

II. California's blanket donor-disclosure mandate is unconstitutional under either standard of scrutiny.

A. The mandate is facially invalid.

"Precision of regulation must be the touchstone" where free speech and free association rights are concerned, and prophylactic rules are naturally suspect. *Riley* v. *Nat'l Fed'n of the Blind of N.C.*, 487 U.S. 781, 801 (1988) (quoting *NAACP* v. *Button*, 371 U.S. 415, 438 (1963)). "Mere convenience" is not a reason to adopt a broad, prophylactic measure. *McCullen* v. *Coakley*, 573 U.S. 464, 486 (2014). When the government infringes those rights, officials bear the "heavy burden" to "demonstrate the appropriateness" of their actions. *Healy* v. *James*, 408 U.S. 169, 184 (1972). California cannot meet the heavy burden of justifying its blanket-disclosure mandate.

1. On its face, the mandate fails strict scrutiny because in all its applications it creates an unnecessary risk of chilling speech.

1. Where "a statute imposes a direct restriction on protected First Amendment activity, and where the defect in the statute is that the means chosen to accomplish the State's objectives are too imprecise, so that in all its applications the statute creates an unnecessary risk of chilling free speech, the statute is properly subject to facial attack." *Sec'y of State of Md.* v. *Joseph H. Munson Co., Inc.*, 467 U.S. 947, 967–68 (1984). That was the case in *Munson*, where this Court considered a Maryland statute imposing a 25% limit on charitable fund-raising expense.

The Court began by distinguishing statutes that, "despite some possibly impermissible application," also cover "a whole range of easily identifiable and constitutionally proscribable conduct." 467 U.S. at 964–65 (cleaned up). In these cases, the Court has often required a plaintiff to show the statute is unconstitutional as applied to her. *Id.* at 965.

As for the 25% limit, the Court found "no core of easily identifiable and constitutionally proscribable conduct that the statute prohibits." 467 U.S. at 965–66. While there may be some organizations whose high fundraising costs are "not due to protected First Amendment activity," the statute could not distinguish those organizations from those who had high fundraising costs "due to protected First Amendment activity." *Id.* at 966. "The flaw in the statute is not simply that it includes within its sweep some impermissible applications, but that in all its applications it operates on a fundamentally mistaken premise that high solicitation costs are an accurate measure of fraud." *Ibid.* "That the statute in some of its applications actually prevents the misdirection of funds from the organization's purported charitable goal is little more than fortuitous." *Ibid.*

What's more, "if an organization indulges in fraud, there is nothing in the percentage limitation that prevents it from misdirecting funds. In either event, the percentage limitation, though restricting solicitation costs, will have done nothing to prevent fraud." 467 U.S. at 967. Accordingly, this Court struck down Maryland's statute as facially unconstitutional. *Id.* at 967–68.

2. The Attorney General's overbroad disclosure rule suffers from the same defects. On its face, the rule severely burdens free speech and association, and "create[s] an unacceptable risk of the suppression of ideas." *Munson*, 467 U.S. at 965 n.13 (quotation omitted); accord *McIntyre*, 514 U.S. at 341–42 (donors who desire anonymity "may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one's privacy as possible"). "[C]ompelled disclosure of affiliation with groups engaged in advocacy may constitute [an] effective . . . restraint on freedom of association," especially when "a group espouses dissident beliefs." *NAACP* v. *Alabama*, 357 U.S. at 462; accord *Brown*, 459 U.S. at 91 ("compelled disclosure of political associations and beliefs . . . can seriously infringe on privacy of association and belief guaranteed by the First Amendment") (quotation omitted). This is a particularly harsh infringement when, as here, those who support a group may face retaliation or intimidation because of their deeply held religious beliefs.

The rule's flaw is "not simply that it includes within its sweep some impermissible applications, but that in all its applications it operates on a fundamentally mistaken premise," *Munson*, 467 U.S. at 966—that revealing the names of donors will accurately reveal fraud after it has occurred. As a result, California's blanket-disclosure mandate fails strict scrutiny in three ways.

First, California cannot satisfy its heavy burden of showing that it has a "compelling" interest. *NAACP* v. *Alabama*, 357 U.S. at 463. California says this is about preventing fraud. But the Court should take

that claimed interest with a grain of salt because *all* states have rules to prevent charitable fraud, yet only California and two others require intrusive donor disclosures. And the Attorney General fails to "explain what makes the California [charitable-oversight] system so peculiar that it is virtually the only State that has determined that" blanket donor disclosure "is necessary." *Eu* v. *S.F. Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 226 (1989).

We know that the overbroad disclosure mandate is not actually about preventing fraud but merely about efficiency or convenience because that's what California's officials candidly said at trial. J.A.294–95. But "the prime objective of the First Amendment is not efficiency." *McCullen*, 573 U.S. at 495. "[T]he First Amendment does not permit the State to sacrifice speech for efficiency." *Riley*, 487 U.S. at 795 (citations omitted).

Second, California cannot satisfy its burden of showing the blanket-disclosure mandate substantially advances any interest in regulating charitable fraud. *Gibson*, 372 U.S. at 546. As this Court has recognized, a "broad prophylactic rule" lacks "any nexus" to the likelihood of fraudulent solicitation. *Illinois, ex rel. Madigan* v. *Telemarketing Assocs.*, 538 U.S. 600, 619 (2003) (cleaned up). Here, a four-day bench trial proved California's "blunderbuss approach," *McIntyre*, 514 U.S. at 357, does "nothing to prevent fraud," *Munson*, 467 U.S. at 967.

The Attorney General's staff admitted this. The Charitable Trust Section has never used a Schedule B to initiate an investigation. J.A.457. Quite the opposite, Schedule Bs (1) are examined by the Section

only *after* a complaint arrives, J.A.462–63, (2) are relevant in less than 1% of investigations, J.A.459–60, and (3) are not an "important document" in *any* investigation, J.A.458. When asked, "How many times have you used Schedule B in the last year?", one of the Attorney General's investigative attorneys couldn't provide a single example. J.A.273. And to the extent the Section needs particularized information, organizations have always provided such data on request. J.A.465–66.

Given all this, it is not clear that the Attorney General's overbroad disclosure mandate advances California's interest in regulating charitable fraud *at all*, much less substantially. And that's unsurprising because there is a fundamental mismatch between this type of donor information and rooting out "bad" charities. Perhaps a nonprofit's leadership is funneling money to contractors owned by family members, or skimming money for its own pockets. But this fraud would not be detected by looking at a donor list.

Third, the Attorney General bears the burden of proving (but cannot) that his blanket-disclosure mandate is narrowly tailored to advance his purported interest. *Gremillion*, 366 U.S. at 297. He requires all charities that fundraise in California to disclose major donor names and addresses even though (1) there is no reason to suspect tens of thousands of nonprofits of wrongdoing; (2) the IRS and often charities' home states already police their activities; and (3) as just summarized, California virtually never uses donors' information in enforcement actions. The rule is "prophylactic, imprecise, and unduly burdensome." *Riley*, 487 U.S. at 800.

By lumping good- and bad-acting charities together and refusing "to employ more precise measures to separate one kind from the other," *Vill. of Schaumburg*, 444 U.S. at 637, California treats thousands of charities as suspected fraudsters. There is nothing wrong with enacting and enforcing anti-fraud laws. *E.g.*, *ibid.*; *Riley*, 487 U.S. at 800. But California's indiscriminate treatment fails to "employ means narrowly tailored to serve a compelling governmental interest." *Munson*, 467 U.S. at 965 n.13.

If the Attorney General is concerned with charitable fraud, that concern would be better addressed by data-specific inquiries to individual charities.[2] Or the Attorney General could require disclosures more targeted at actual fraud, *e.g.*, disclosing executive salaries or related-party transactions. The Attorney General's witnesses offered no reason why such targeted approaches are unworkable, presumably because there are none.

It was the Attorney General's "burden of showing the District Court that the proposed alternative[s are] less effective." *Ashcroft* v. *ACLU*, 542 U.S. 656, 668 (2004). Yet the Attorney General did not even try to satisfy that burden below, choosing instead to impinge on constitutional rights.

Because the Attorney General's disclosure mandate fails strict scrutiny in three ways, it should be permanently enjoined.

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[2] The Attorney General has conceded this is a less invasive alternative than the blanket-disclosure scheme. Oral Argument at 22:30–23:30, *Center for Competitive Politics* v. *Harris*, No. 14-15978 (Dec. 5, 2014), *available at* https://perma.cc/45YQ-5DXF.

2. On its face, California's blanket-disclosure mandate fails *Buckley*'s exacting-scrutiny standard.

Donor-disclosure mandates must clear significant hurdles even under *Buckley* and its progeny. This Court subjects them to "close[ ]" or "exacting scrutiny," *Davis* v. *FEC*, 554 U.S. 724, 744 (2008), and the analysis is three-pronged. First, the State's interest must be "sufficiently important" to justify the disclosure. *John Doe No. 1*, 561 U.S. at 196 (quoting *Citizens United*, 558 U.S. at 336, quoting *Buckley*, 424 U.S. at 64, 66). In other words, the strength of the government's interest "must reflect the seriousness of the actual burden on First Amendment rights." *Davis*, 554 U.S. at 744 (citing *Buckley*, 424 U.S. at 68).

Second, there must be "a relevant correlation or substantial relation" between the State's "interest and the information required to be disclosed." 554 U.S. at 744 (quoting *Buckley*, 424 U.S. at 64). What's more, as discussed above, the disclosure requirements must "be the least restrictive means" of advancing the government's interest. *Buckley*, 424 U.S. at 68.

Third, even if a disclosure mandate survives the first two hurdles, groups merit an as-applied exemption once they "show *only a reasonable probability* that the compelled disclosure . . . will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Buckley*, 424 U.S. at 74 (emphasis added); accord *Citizens United*, 558 U.S. at 370; *Brown*, 459 U.S. at 100–02.

Here, California's mandate is facially invalid because the State's interest in policing charitable fraud does not justify a blanket disclosure requirement and because that requirement is neither sufficiently related nor narrowly tailored to that interest. Since the disclosure requirement is facially invalid, this Court need not consider whether the Law Center is entitled to an as-applied exemption. But that exemption applies when, as here, there is a reasonable probability of threats and reprisals.

a. The Attorney General's charity-policing interest is not sufficiently important to justify the mandate's severe burden on free association.

This Court has "long . . . recognized that significant encroachments on First Amendment rights of the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest." *Buckley*, 424 U.S. at 64. Here, any interests in overseeing charities raising funds within California's borders cannot justify the severe associational harm caused by exposing donors of thousands of charities nationwide.

The Attorney General has not shown that charitable fraud is a problem of sufficient importance to merit a blanket donor-disclosure law. Any fraud-prevention interest is merely one of possible future convenience; it does not go to "the free functioning of our national institutions," *Buckley*, 424 U.S. at 66. This "less powerful" interest fails to justify the severe speech burden. *McIntyre*, 514 U.S. at 356.

Many nonprofits—like the Law Center—are based in other states and have no office in California. In the rare instance of charitable fraud, the State is unlikely to accomplish more than barring a charity from fundraising in its borders. California has no effective way to enforce that decree, as evidenced by the thousands of charities that fundraise in the State without registering at all. J.A.255–56.

Even for California-based nonprofits, the State's charity-policing interest in collecting Schedule Bs is minimal. Nearly all the fraud the Charitable Trust Section investigates is uncovered and reported by private individuals or the media. J.A.467–68. Those impacted by charitable fraud may file their own civil actions for damages. Cal. Civil Code 1709. To the extent the Attorney General's efforts are needed to stop charitable abuse, the State has no trouble obtaining Schedule Bs when it needs them, J.A.465–68, and private foundations' donor information is already a matter of public record. 26 U.S.C. 6104(b).

Charities' and donors' fundamental right to free association "lies at the foundation of a free society." *Shelton*, 364 U.S. at 486–86; accord *supra* Part I.A. Compelled disclosure "seriously infringe[s] on privacy of association and belief guaranteed by the First Amendment." *Buckley*, 424 U.S. at 64. Its natural result is the cancel culture this Court has repeatedly warned against. *E.g.*, *Bates*, 361 U.S. at 524; *NAACP* v. *Alabama*, 357 U.S. at 462–63; *Watkins* v. *United States*, 354 U.S. 178, 197 (1957); accord Part I.C. Charities' and donors' "strong associational interest in maintaining . . . privacy . . . may not be substantially infringed upon such a slender showing" as the Attorney General's here. *Gibson*, 372 U.S. at 555–56.

In sum, the Attorney General's interest in enforcing the donor-disclosure mandate does not rise to the level of protecting "the free functioning of our national institutions." *Buckley*, 424 U.S. at 66 (citation omitted). California's interests are "different and less powerful," *McIntyre*, 514 U.S. at 356, and fail even exacting scrutiny when considered against charities' and donors' right to "pursue their lawful private interests privately and to associate freely with others in so doing," *NAACP* v. *Alabama*, 357 U.S. at 466.

b. The Attorney General's disclosure mandate is a prophylactic measure of convenience that bears no substantial relation to any interest in policing charities and is not narrowly tailored.

The Attorney General's blanket-disclosure mandate is not "complaint driven." J.A.269. The Registry "collects [the] universe of [Schedule B] documents from every charity, the good, the bad and the ugly," J.A.463, and stores it online, J.A.418, 423–27. Although the Registry uploads private donor information, the Charitable Trust Section almost never consults it in conducting investigations. J.A.457.

Schedule Bs collect dust in cyberspace, an attractive target for hackers, *unless* the Section receives an outside complaint about a charity. J.A.463. Then an employee *might* review them less than 1% of the time. J.A.459–60. The Section successfully audits charities who do not have Schedule Bs on file. J.A.463–64. And employees have no trouble obtaining Schedule Bs upon request. J.A.465–67.

No substantial relation exists between this nationwide dragnet and any interest in policing charitable fraud and abuse. It is inconceivable that a charity engaged in fraud would evade detection by filing only the Form 990 but would be caught based on a Schedule B. The disclosure mandate is just an expedient way to have charities' donor info at hand in the (highly) unlikely event a complaint is filed.

Such an overbroad measure is not substantially related to the Attorney General's charity-policing efforts. The mandate treats *all* charities like suspected fraudsters regardless of their individual track records. *Cf. Vill. of Schaumburg*, 444 U.S. at 637. It applies no matter "the character or strength of [a group's] interest in anonymity." *McIntyre*, 514 U.S. at 352. The disclosure mandate's lone discernible purpose is convenience, not any tangible benefit to charity investigations.

Further, the mandate is hardly narrowly tailored, as explained above. The Attorney General has not met his burden to prove there are no less intrusive ways to obtain Schedule Bs in the unlikely event one might aid fraud-prevention or prosecution.

B. At a minimum, the Law Center is entitled to an as-applied exemption because it showed at trial a reasonable probability that disclosure would subject donors to harassment.

Although the challenged provisions in *Buckley* "were facially upheld, [this] Court acknowledged that as-applied challenges would be available if a group could show *a reasonable probability* that disclosure of its contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Citizens United*, 558 U.S. at 367 (emphasis added, cleaned up). This is not an "onerous" showing. *John Doe No. 1*, 561 U.S. at 204 (Alito, J., concurring). For the as-applied exemption to be effective, "the burden of proof must be low," *id.* at 212, and "courts should be generous in granting as-applied relief," *id.* at 206.

Associations may show this "reasonable probability" in many ways. *Buckley* gave several examples, including: (a) "past or present harassment of members due to their associational ties," (b) "harassment directed against the organization itself," or (c) "[a] pattern of threats or specific manifestations of public hostility." 424 U.S. at 74.

The Law Center presented substantial evidence of all three at trial, and the district court concluded that it satisfied the as-applied exemption standard. Pet.App.58a–63a. Its donors face magnified threats because of the Center's advocacy for traditional faith-

based principles, the clientele it serves, and the devout convictions of its personnel.[3]

1. The Law Center's advocacy has led to threats and harassment.

The Law Center supports and advocates views that divide public opinion out of the sincere belief that public ethics and morality are in decline. The Law Center was founded as a public-interest law firm, based on Catholic teachings, to advocate and litigate conservative principles. J.A.87–88. It represents like-minded persons regardless of their faiths.

Based on its convictions, the Law Center has taken public positions on many issues that arouse strong passions. These matters include the definition of marriage, the contraceptive mandate under the Affordable Care Act, and the free speech rights of right-to-life advocates, J.A.95–96, 101, 104, all issues on which the California Attorney General has taken opposite positions, *e.g.*, J.A.132–34, 210–13, 360–63. Thomas More also provides legal support to American military families, which should not be controversial, but at times conflicts with notions of political correctness, as shown by the Wood family's case.

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[3] Regarding the Law Center's as-applied claim, the Ninth Circuit criticized the Law Center's return preparers for listing on its federally filed Schedule B anyone who contributed $5,000 or more, when the Law Center *could* have listed only those who gave more than 2% of annual contributions. Pet.App.30a. But this honest misunderstanding based on cryptic IRS regulations is immaterial. Whereas the Law Center had every reason to believe the IRS would protect its donor information from public disclosure, the exact opposite is true of the Attorney General.

After a four-day trial, the district court found that (1) "the evidence of threats and harassment directed toward TMLC because of their views indicates a high likelihood of similar treatment towards donors," Pet.App.59a, (2) "the compelled disclosure of the identity of TMLC donors would burden the donor's First Amendment [r]ights," Pet.App.61a, and (3) donors would fear disclosure regardless of the Attorney General's new "protective" regulation because the Registry had a "proven and substantial history of inadvertent disclosures" under the same policy. Pet.App.62a–63a. These findings control because they are abundantly supported by the record and not clearly erroneous. *Anderson* v. *Bessemer City*, 470 U.S. 564, 573 (1985).

2. The Law Center's clients have received death threats in response to their religious exercise.

The Law Center assures donors that their identities will be kept confidential. It cannot make the same promise to its clients. Clients are the immediate beneficiaries of donors' generosity, and, as the two groups' interests are aligned, the scorn, financial losses, and severe threats that clients have bravely endured foretell the public obloquy donors would face if their identities were known.

As explained above, Thomas More clients provided alarming evidence at trial of the severe consequences resulting from expressing their beliefs. Former Oklahoma State Representative Sally Kern was bombarded with 30,000 hateful, harassing, and threatening emails and phone calls and a death threat. J.A.151–60. Melissa Wood and her husband

received many hateful messages, including a threat from someone claiming to be a schoolmate to kidnap, torture, and kill their teenage daughter in the most gruesome way possible. J.A.339–40.

Pamela Geller was the subject of two assassination plots, one in Garland, Texas, and one in New York. Later, organizers of events where Geller was scheduled to speak canceled her speaking engagements for fear of what would occur if they hosted her. J.A.238, 247. And an ISIS Ayatollah issued a fatwa commanding operatives to kill Geller and condemning anyone who "protect[s] her," "houses her events," or "gives her a platform to spill her filth" as "legitimate targets." J.A.235, 329.

Harassment of an organization's known associates may show potential chill to unknown donors. *E.g.*, *Brown*, 459 U.S. at 100 ("evidence of private and government hostility toward the [plaintiff-organization] and its members establishes a reasonable probability that disclosing the names of contributors and recipients will subject them to threats, harassment, and reprisals"); accord *Shelton*, 364 U.S. at 487–90; *Talley*, 362 U.S. at 63–66. That is certainly true about the Law Center.

3. Law Center donors and staff have been boycotted and subjected to vile communications.

The Law Center could not interview its donors about the chilling effect of California's donor disclosure directive—doing so would only deepen the chill—but it did present evidence from two donors, one well-known, the other anonymous, as well as evidence about threats made to staff.

Mr. Tom Monaghan, the Law Center's co-founder and a significant donor, was wrongfully defamed as one of the "most antigay persons in the country." J.A.441. Domino's Pizza, the business he founded, was boycotted for his pro-life views. J.A.446–47.

The Law Center's other donor remains anonymous. The donor was concerned that ISIS would "break" in, obtain "a big list of donors," and target donors "one at a time," so the donor mailed cash with "no clues"—not even a "finger print"—about the donor's identity. J.A.111, 303.

As for Law Center staff, they routinely receive hate mail, abusive phone calls, and vulgar and vile electronic communications. *E.g.*, J.A.100–01, 302, 304–19. And one of the Law Center's attorneys was the subject of an unfounded state bar complaint because of a legitimate legal matter on which the attorney worked. J.A.105–07.

Reflecting on all this testimony, the district court found it "illustrative" that "the anonymous donor" "was afraid of the repercussions of being affiliated with TMLC as a donor." Pet.App.61a. "It is highly likely," the court reasoned, "that other donors felt the

same fear as this anonymous donor and equally likely that at least some of those donors withheld contributions because of that fear. Compelling the disclosure of donors' identities would only compound such fears and difficulties." *Ibid.*

4. Religious exercise can lead to harassment and even harm to those who try to live their faith in the public square.

The district court heard expert testimony from Dr. Paul Schervish, a retired faculty member at Boston College, and author of the only peer-reviewed sociological study of anonymous donor behavior. J.A.167, 186–87. Dr. Schervish testified that:

- Donors "have a legitimate and reasonable desire, and indeed expectation . . . when promised it, to have their names, addresses, [and] contact information held confidentially by the organization, not to be made known to third parties." J.A.188.
- Donors' desire for anonymity heightens the need for protection when it has a religious basis, because "[r]eligion is like fire" in that it can "lead to intense hatred" and even result in "physical bodily harm" to those living their faith in society. J.A.189.

- "[H]ighly controversial issues" gain the "attention of militant groups, partisan groups, and mentally ill individuals," and have led to catastrophic consequences. J.A.188–89. Donors would "reasonably fear that disclosure of their names and addresses" will lead to harassment or harm. J.A.188.
- Disclosure of the Law Center's Schedule B donors *to the Registry* (*i.e.*, not even to third parties) would "chill contributions" to the Law Center. J.A.190.
- With current technology, the public may easily obtain confidential information about a donor and broadcast it to others who want to solicit or do harm. J.A.189.[4]

In sum, abundant evidence and uncontroverted expert testimony supports the district court's findings that there is "a reasonable probability" that disclosure of the Law Center's donors will "subject them to threats, harassment, or reprisals." *Citizens United*, 558 U.S. at 367 (cleaned up). The Law Center is entitled to an as-applied exemption.

[4] One of California's own Deputy Attorneys General complained that *she* received unwanted solicitations when her identity as a donor was made public against her wishes. J.A.265–66.

C. The Ninth Circuit's version of exacting scrutiny is distorted, free-form, and hazardous to First Amendment rights.

The Ninth Circuit wrongly construed exacting scrutiny as a sliding-scale test: "the interest and tailoring required . . . varies from case to case" depending on the judges' subjective perception of associational harm. Pet.App.134a (panel response to dissent from denial of reh'g en banc). If the court deems the burden "great, the interest and the fit must be as well." *Ibid.* But if the court views the burden as "slight, a weaker interest and a looser fit will suffice." *Id.* at 135a.

Buckley held no such thing. In every case, the State's interest must be strong enough to justify the disclosure's actual burden on associational rights, there must be a substantial relation between the State's interest and the information disclosed, and the regulation at issue must be narrowly tailored. *Supra* Parts I.E., F. Further, *Buckley* recognized that "compelled disclosure, in itself, can seriously infringe on privacy of association and belief." 424 U.S. at 64. So the real questions are whether disclosure is truly needed and if the government's interest can justify serious damage to "basic constitutional" rights. *Id.* at 25. Few interests can hurdle that bar.

Violating donors' privacy is always a severe burden on free association. *Supra* Part I.A. Judges lack discretion to minimize that harm based on ad hoc interest balancing. Just as this Court rejected a "balancing of the value of . . . speech against its societal costs," it should reject the Ninth Circuit's "free-floating test" for associational freedoms, *United*

States v. *Stevens*, 559 U.S. 460, 470 (2010) (cleaned up), a test the Ninth Circuit has now applied three times outside the electoral context: here, in the companion *Americans for Prosperity Foundation* case (No. 19-251), and in *Center for Competitive Politics* v. *Harris*, 784 F.3d 1307 (9th Cir. 2015).

"The First Amendment itself reflects a judgment by the American people that the benefits of its restrictions on the Government outweigh the costs." *Stevens*, 559 U.S. at 470; accord, *e.g.*, *Knox*, 567 U.S. at 313–14 (rejecting the Ninth Circuit's balancing test for mandatory association with a union). Nothing in the First Amendment's text—which protects free speech and assembly—authorizes the Ninth Circuit's free-form analysis.

Freedom of association "is entitled to no less protection than any other First Amendment right." *Bates*, 361 U.S. at 528 (Black and Douglas, JJ. concurring). Yet exacting scrutiny fails to offer a meaningful or consistent standard. Often "'exacting scrutiny' means no scrutiny at all," *Del. Strong Families*, 136 S. Ct. at 2378 (Thomas, J., dissenting), as the Ninth Circuit's order exemplified.

That is reason enough not to extend the exacting-scrutiny standard outside the electoral context, and in all events, to reject the unmoored and subjective version of the exacting-scrutiny test the Ninth Circuit employed below.

D. The Law Center satisfies the remaining injunction factors.

Once this Court determines that the Attorney General's blanket disclosure rule is unconstitutional, there is no real dispute about the propriety of an injunction. The district court found that the Law Center "has suffered an irreparable injury as a result of its required disclosure of Schedule B." Pet.App.64a. In addition, that constitutional injury "cannot adequately be compensated by damages or any other remedy available at law." *Id.* at 65a. The Attorney General's loss of "convenience and efficiency" is "far outweighed by the hardship placed on" the Law Center by mandating it to disclose its donors. *Id.* at 66a. And "the public interest favors an injunction." *Ibid.* Accordingly, the Law Center is entitled to a permanent injunction.

III. The Internal Revenue Service does not seek to control charities' speech and its donor-disclosure rule is readily distinguishable from the Attorney General's.

The context, design, purpose, and effect of the Internal Revenue Service's donor-disclosure rule is quite different from the Attorney General's. The Attorney General cannot rely on the IRS's disclosure requirement to justify his own.

As to context, the IRS's disclosure mandate is connected to a government tax-benefit program. Federal law gives 501(c)(3) organizations, like the Law Center, two valuable advantages: (1) an exemption from income taxes and (2) tax-deductibility of donations. *Regan* v. *Taxation With*

Representation of Wash., 461 U.S. 540, 543–44 (1983). The IRS defines tax-exempt charities, requires them to make tax filings, and oversees a disclosure regime that concerns tax benefits.

In contrast, the Attorney General's Office is not a tax authority and oversees no tax benefits. The Law Center—a foreign nonprofit that does not "do[ ] business" in California for tax purposes—is not subject to California tax. Cal. Rev. & Tax. Code 23151(a). Even for out-of-state charities that do business in California, the Franchise Tax Board relies on the IRS's exemption-determination letter and makes no independent assessment of tax-exempt status. Cal. Franchise Tax Bd., FTB 927 Publication, Tax-Exempt Status and Federal Exemption (Dec. 2020), https://perma.cc/S9EV-68VG.

The only benefit the Attorney General's Office offers the Law Center is the ability to speak and fundraise in California. But this "benefit" is a constitutional right, not a matter of state grace. *Madigan*, 538 U.S. at 610. California lacks the power to keep "foreign" charities from "associat[ing] for the collective advocacy of ideas." *NAACP* v. *Alabama ex rel. Flowers*, 377 U.S. 288, 309 (1964). Under the First Amendment, the Law Center and its donors have the right to "express their views, by words and lawful conduct, on . . . subject[s] of vital constitutional concern." *Ibid.*

When it comes to design, the differences between the IRS's and Attorney General's disclosure regimes are equally stark. Congress requires tax-exempt charities to disclose their top donors by statute. 26 U.S.C. 6033(b)(5). But it did so only *after* enacting a comprehensive system of legal protections to guard the confidentiality of donor information, including an explicit ban on disclosing donors' names or addresses, 26 U.S.C. 6104(b) & (d)(3)(A), on pain of fines, job loss, and potential imprisonment, 26 U.S.C. 7213(a)(1) & 7213A. But California has no laws that punish disclosure by the Attorney General's Office. Rather, the Attorney General unilaterally imposed the blanket-disclosure requirement and has instituted no penalty, even for an intentional leak. J.A.285–86.

Finally, the purpose and effect of the two disclosure mandates are dissimilar. The IRS uses confidential donor information to ensure that entities are operated for a charitable purpose and publicly supported, and therefore merit the benefits of 501(c)(3) status. It does not directly try to identify and punish fraud. Nor does the IRS generally seek to regulate charities' issue advocacy. Limits on charities' campaign-related statements simply reflect the tax-exempt program's boundaries. *Regan*, 461 U.S. at 545–48. Federal tax law does not prohibit any group's speech, nor could it. *Id.* at 545–46; accord *F.C.C.* v. *League of Women Voters of Cal.*, 468 U.S. 364, 381–83 (1984); *Grosjean* v. *Am. Press Co.*, 297 U.S. 233, 243–51 (1936). It simply requires charities to accept related conditions, like donor disclosure, to obtain financial benefits. *Regan*, 461 U.S. at 546.

Conversely, the Attorney General's disclosure mandate is part and parcel of California's effort to regulate protected speech and association. Charities must register with and receive permission from the State to fundraise, which is speech intrinsically tied to issue advocacy. *Madigan*, 538 U.S. at 611–12, 622. If nonprofits refuse to provide the State with their major donors' names and addresses, California bars them from communicating or associating with those within its borders—*i.e.*, nearly 40 million people—and subjects charities and their officers to potential fees, penalties, suspension, injunctions, and attorney's fees and costs. Cal. Gov. Code 12586.1, 12591.1, 12598.

The Attorney General's disclosure rule forces the Law Center and other charities to sacrifice a core First Amendment right for zero benefit. Either (1) nonprofits disclose their major donors and violate their right to associational privacy, or (2) charities refuse to disclose their donors and the State bars them from engaging in protected speech and association within its borders. This "unconstitutional condition" raises the highest of "constitutional concerns" because California is "attempt[ing] to impose its will by force of law," not by offering incentives. *Regan*, 461 U.S. at 545, 550 (cleaned up).

In sum, the IRS and California disclosure rules are unrelated. This Court may overturn the Attorney General's coercive disclosure mandate without invalidating the IRS's rule.

* * *

The Attorney General compels disclosure of highly sensitive donor information that he does not need, then trusts that information to the care of students, seasonal workers, and the Internet, all with predictable results. When confidential information is released, it places donors in imminent danger of hate mail, violence, ostracization, and boycotts. Yet the Attorney General has no safeguards in place and relies on charitable organizations to discover when the Registry makes a mistake—too late for those whose confidential information has already been leaked to the public.

Many supporters will consider the Attorney General's scheme and reasonably conclude that the risks of disclosure are too great. The result will be that those who make the most threats will effectively shut down those with whom they disagree, whether that be the March for Life or the Sierra Club.

This Court should reject the Attorney General's blanket-disclosure scheme because it chills speech and diminishes free expression. As in *NAACP* v. *Alabama*, this Court should again recognize the right to speak not only publicly and standing alone, but also anonymously through donations to and memberships in organizations that publicly advocate. The Constitution protects donor privacy, and it should remain that way.

The court of appeals should be reversed, and the case remanded only for the entry of a permanent injunction.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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FEBRUARY 2021