No. 19-251 & 19-255

IN THE
Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,
Petitioner,
v.
MATTHEW RODRIQUEZ, IN HIS OFFICIAL CAPACITY AS THE ACTING ATTORNEY GENERAL OF CALIFORNIA
Respondent.

THOMAS MORE LAW CENTER,
Petitioner,
v.
MATTHEW RODRIQUEZ, IN HIS OFFICIAL CAPACITY AS THE ACTING ATTORNEY GENERAL OF CALIFORNIA
Respondent.

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

BRIEF OF CHARITYWATCH AS AMICUS CURIAE IN SUPPORT OF RESPONDENT

KATHLEEN R. HARTNETT
Counsel of Record
JULIE VEROFF
COOLEY LLP
101 California Street
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

ADAM S. GERSHENSON
COOLEY LLP
500 Boylston Street
Boston, MA 02116

ELIAS S. KIM
COOLEY LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004

March 31, 2021

Counsel for Amicus Curiae

TABLE OF CONTENTS

Page

STATEMENT OF INTEREST 1

INTRODUCTION AND SUMMARY OF ARGUMENT........... 2

ARGUMENT 4

I. CHARITIES ARE BOTH UNIQUELY IMPORTANT AND STRUCTURALLY UNACCOUNTABLE.. 4

A. Public Charities Play A Unique Role In The U.S. Economy 5

B. Charities Have Inherent Accountability Problems That Can Lead To Mismanagement And Wrongdoing 8

II. INDEPENDENT ORGANIZATIONS WORK TO ADDRESS THESE ACCOUNTABILITY PROBLEMS, BUT POLICIES LIKE CALIFORNIA'S ARE ALSO NECESSARY 11

A. Independent Organizations Promote Accountability By Analyzing Charities' Public Information 11

B. California's Oversight Is Necessary Because Independent Organizations Can Use Only Publicly Available Information And Lack Enforcement Power 13

TABLE OF CONTENTS
(continued)

Page

C. Recent Examples Of Mismanagement And Fraud Show That Meaningful Accountability Requires Both Watchdog Organizations And Government Regulators 13

D. California Plays A Crucial Role By Preventing Charitable Wrongdoing Without Imposing Costs On Most Charities And Donors 21

CONCLUSION 31

TABLE OF AUTHORITIES

Page(s)

Statutes and Regulations

26 U.S.C.
§ 170 7
§ 501(a) 5
§ 501(c) .... *passim*
§ 509 .... 6, 7
§ 527 26
§ 6104(d) 8

26 C.F.R.
§ 1.6033-2 .... 8, 24, 9

Cal. Code Regs.
tit. 11, § 301 23
tit. 11, § 310(b) 24, 28

Other Authorities

Assessing Veterans Charities: Hearing Before the H. Comm. on Oversight and Government Reform 110th Cong. 100 (Dec. 13, 2007) (statement of Daniel Borochoff, President, American Institute of Philanthropy) 10, 14

Blackbaud Institute for Philanthropic Impact, *Charitable Giving Report: How Fundraising Performed in 2017* (Feb. 2018) 29

Cal. Dep't of Justice, *Attorney General Becerra Announces Lawsuit Against Move America Forward for Operating a Misleading Solicitations Scheme* (Jul. 24, 2019) 20

TABLE OF AUTHORITIES
(continued)

Page(s)

Charitable Registration Audit Requirements, Harbor Compliance, https://bit.ly/3m9Q5Yw (last visited Mar. 30, 2021) 22

Charity Valuation, CharityWatch, https://bit.ly/3fpV1XM (Aug. 1, 2011) 14, 15, 16

CharityWatch Difference, CharityWatch, https://bit.ly/3w8sBHM (last visited Mar. 30, 2021) 11

Council on Foundations, *Foundation Basics*, https://bit.ly/3m5n68e (last visited Mar. 30, 2021) 27

Fed. Trade Comm'n, *FTC, States Settle Claims Against Two Entities Claiming to Be Cancer Charities; Orders Require Entities to Be Dissolved and Ban Leader from Working for Non-Profits* (Mar. 30, 2016)....18

Fed. Trade Comm'n v. Cancer Fund of America, Inc., No. 2:15-cv-00884-NVW, ECF No. 7 (Complaint) (D. Ariz. May 18, 2015) 17

Fundraising Compliance Infographic, Harbor Compliance, https://bit.ly/3rxDKO (last visited Mar. 30, 2021) 22

Government of Canada, *The Canadian Revenue Agency revokes the charitable status of The Orion Foundation* (May 10, 2010)....15

TABLE OF AUTHORITIES
(continued)

Page(s)

Gross Domestic Product by Industry and Input-Output Statistics, U.S. Department of Commerce, Bureau of Economic Analysis (Sept. 30, 2020), https://bit.ly/3wbOvts 6

Hall of Shame: The Personalities Behind Charity Scandals, CharityWatch, https://bit.ly/3cyCo2b (last updated Aug. 24, 2018) 10

Health of the U.S. Nonprofit Sector, Independent Sector (Oct. 2020), https://bit.ly/2PkPasa 6, 8, 9

Internal Revenue Service, *EO Operational Requirements: Private Foundations and Public Charities*, https://bit.ly/3foLyjy (last visited Mar. 30, 2021) 7

Internal Revenue Service, *Exempt Organization Types*, https://bit.ly/3rzr6in (last visited Mar. 30, 2021) 26

Internal Revenue Service, *Private Foundation Excise Taxes*, https://bit.ly/3ctLEV8 (last visited Mar. 30, 2021) ... 27

Internal Revenue Service, *Publication 557: Tax-Exempt Status for Your Organization* (Feb. 2021) 7, 25, 27

Internal Revenue Service, *Publication 4220: Applying for 501(c)(3) Tax-Exempt Status* (2018) 7

Internal Revenue Service, *Publication 4221-PF, Compliance Guide for 501(c)(3) Private Foundations* (Aug. 2014) 27

TABLE OF AUTHORITIES
(continued)

Page(s)

Internal Revenue Service, *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, https://bit.ly/3stbHBn (last visited Mar. 30, 2021)....25

Internal Revenue Service, *Social Welfare Organizations*, https://bit.ly/3sAkMrY (last visited Mar. 30, 2021) 25

John Francis Reilly et al., *IRC 501(c)(4) Organizations*, Exempt Organizations-Technical Instruction Program for FY 2003 (2003)....25

Katie Colchin, *Who Owns Stocks in America? Individual Investors*, Securities Industry Financial Markets Association (Oct. 10, 2019) 9

Key Facts on U.S. Nonprofits and Foundations, IssueLab (Apr. 2020) 6, 30

Kim Barker, *Pro-Troop Charity Misleads Donors While Lining Political Consultants' Pockets*, ProPublica (Aug. 5, 2014)....20

Long Running Family Charity Scheme Exposed, CharityWatch (last updated Mar. 30, 2016), https://bit.ly/3cvjtFm....17, 18

National Association of State Charities Officials, *State Charity Registration Provisions – As of May 15, 2020*, https://bit.ly/3rA5G4B 23

TABLE OF AUTHORITIES
(continued)

Page(s)

Nonprofit Explorer, *Coalition for the Homeless Inc.*, ProPublica, https://bit.ly/31qgs2O (last visited Mar. 30, 2021) 6

Nonprofit Explorer, *John F. Kennedy Center for the Performing Arts*, ProPublica, https://bit.ly/39q1heb (last visited Mar. 30, 2021) 6

Our Charity Rating Process, CharityWatch, https://bit.ly/3w8sKei (last visited Mar. 30, 2021).. 12, 22, 28

Our Mission, Feed the Children, https://bit.ly/3u3gKc3 (last visited Mar. 30, 2021) 14

Our Mission, MAP International, https://bit.ly/2QPjATO (last visited Mar. 30, 2021) 15

People v. Move America Forward, No. 34-2019-00261222, Dkt. No. 8 (Complaint) (Cal. Super. Ct. Jul. 24, 2019) 19, 20

Regina E. Herzlinger, *Can Public Trust in Nonprofits and Governments Be Restored?*, Harvard Business Review Magazine (Mar.–Apr. 1996) 8, 9

Regina E. Herzlinger, *Effective Oversight: A Guide For Nonprofit Directors*, Harvard Business Review Magazine (Jul.–Aug. 1994) 5

STATEMENT OF INTEREST

Amicus CharityWatch is an independent nonprofit organization that rates the financial performance of charities. CharityWatch's mission is to maximize the effectiveness of every dollar contributed to charity by providing donors with the information they need to make more informed giving decisions. For nearly 30 years, CharityWatch has provided commentary to hundreds of media outlets and has partnered regularly with journalists who are investigating charities.

CharityWatch's work complements state and federal charity regulators because CharityWatch often can expose fraud, misleading marketing and fundraising tactics, and other wrongdoing at charities well before regulators are able to pursue formal legal actions. CharityWatch has been called upon by Congress for testimony on the nonprofit sector's effort to help 9/11 victims; for commentary on charities' responses to hurricanes Katrina and Rita; and for expert opinions and research with respect to congressional investigations into wrongdoing and significant waste at charities purporting to help veterans. Through its efforts, CharityWatch has helped donors to choose wisely and has pushed charities to act ethically.

Amicus has a strong interest in government charity regulators having appropriately circumscribed tools to access the information necessary to root out fraud and other wrongdoing in the charitable sector. Amicus therefore submits this brief in support of Respondent's confidential major-donor reporting policy.[1]

---

[1] No counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel made a monetary contribution to this brief's preparation and submission. Respondent has consented to this *amicus curiae* brief, and Petitioners have filed blanket consent letters on the docket.

INTRODUCTION AND SUMMARY OF ARGUMENT

Charitable nonprofits play a critical and unique role in the U.S. economy. Because they are not bound by fiduciary duties to shareholders or by the various constraints that bind government institutions, charitable nonprofits can address important social problems in ways that for-profit corporations and government institutions cannot or will not. And because the Internal Revenue Code incentivizes the creation and support of nonprofits with a set of robust tax benefits, the U.S. nonprofit sector—nearly three-fourths of which consists of public charities—has become a major industry, contributing over $1 trillion to U.S. GDP and receiving hundreds of billions of dollars in donations every year.

But the very independence that can enable charities to act with greater effectiveness than for-profit corporations and government institutions has an associated risk. Without shareholders demanding profit maximization and without the democratic pressure of the ballot box, charities are not formally accountable to their donors or the individuals and communities they serve. This lack of accountability makes charities structurally vulnerable to mismanagement and fraud. And the size and importance of the charitable sector means that such mismanagement and fraud—even if not the norm—has a significant economic and social impact.

Independent watchdog organizations like Amicus provide donors with tools to assess charities' effectiveness and ethics so that donors can make informed giving decisions. For example, Amicus issues charity reports that include a financial efficiency metric graded on an "A+" to "F" scale based on an analysis of (1) the percent of total expenses spent on a charity's programs and (2) the cost of

raising each $100 in public support. To make these calculations for a charity, Amicus uses information from the charity's federal Form 990 (the publicly available tax return form that each registered charity submits to the Internal Revenue Service every year), the charity's audited financial statements (if the charity voluntarily publishes them or operates in a state that requires such statements be filed and made publicly available), and any other public financial documents.

But the role that independent organizations like Amicus can play begins and ends with the information that is publicly available. Federal and state governments, by contrast, have important additional enforcement tools. They can require charities to confidentially provide them with information like that contained on the non-public Schedule B of Form 990—*i.e.*, the names, addresses, and total contributions of major donors and descriptions of large in-kind gifts. And unlike independent organizations, federal and state governments can bring enforcement actions.

The oversight efforts undertaken by federal and state governments, however, have been mixed. Although there are examples of meaningful federal oversight, federal tax authorities are focused largely on collecting tax revenue (of which charities provide relatively little) and so federal enforcement, while important, is incomplete and benefits from support from state regulators. But many states, despite requiring registration of charities that solicit donations in their jurisdictions, do not provide any sort of meaningful oversight.

Some states, however, including California, prioritize robust oversight of charities. By requiring that charities confidentially disclose their Schedule Bs, and thus their

major donors, to the California Department of Justice, California gives its regulators a critical tool for quickly detecting charitable wrongdoing. This oversight helps to preserve the public's trust in charities, thereby encouraging donors to continue supporting charitable programs and services that are critical to civil society.

California's confidential major-donor reporting policy, moreover, strikes an appropriate balance between providing effective oversight and respecting the privacy of donors. By requiring charities to report only major donors (information already required annually by the Internal Revenue Service), and by agreeing to keep the reported information confidential, the policy permits state authorities to have the information needed to target the worst abuses in the charity sector while imposing no unnecessary or unjustified burdens on charities and donors.

In sum, California plays a role that most states will not and that organizations like Amicus cannot. The significant, positive effect of California's confidential major-donor reporting policy on charity regulation, accountability, and donor confidence provides important context for this Court's analysis.

ARGUMENT

I. CHARITIES ARE BOTH UNIQUELY IMPORTANT AND STRUCTURALLY UNACCOUNTABLE

By supplying services that for-profit corporations and government institutions cannot, nonprofit charities play a critical role in the U.S. economy and society. And because the federal government has crafted tax policies to incentivize the creation and support of charities, the charitable sector has grown to the same size as several

major for-profit industries. But charities' structural features render them inherently unaccountable to donors and so create a significant risk of mismanagement and fraud.

A. Public Charities Play A Unique Role In The U.S. Economy

The Internal Revenue Code incentivizes the creation of "nonprofit" organizations—*i.e.*, organizations that do not distribute "net earnings" to private shareholders or individuals—by exempting certain nonprofit organizations from paying federal income taxes. *See* 26 U.S.C. §§ 501(a), (c). Covered nonprofit organizations include public charities and private foundations, as well as other types of organizations, ranging from professional football leagues to teachers' retirement funds to cemetery companies. *See id.* §§ 501(c)(6), (11), (13).

The reason for incentivizing the creation of nonprofits is straightforward: nonprofit organizations can address important social problems in ways that for-profit corporations and governments cannot. Because nonprofits do not need to answer to shareholders, nonprofits can provide unprofitable services without "compromis[ing] quality." *See* Regina E. Herzlinger, *Effective Oversight: A Guide For Nonprofit Directors*, Harvard Business Review Magazine (Jul.–Aug. 1994), https://bit.ly/3m03emK. And because nonprofits typically are governed by small boards of directors, they often are more flexible and efficient than government institutions. *Id.*

The Internal Revenue Code's incentive scheme has worked. At the end of 2019, over 1.7 million nonprofits

were registered with the IRS.[2] That year, they contributed over $1.2 trillion to U.S. GDP[3]—roughly the same as each of the retail trade, wholesale trade, and information industries.[4] Nonprofits have become the primary purveyors both of cultural services with high costs, such as performing arts centers,[5] and of necessary services for low-income individuals, such as homeless shelters.[6]

Although there are twenty-nine categories of organizations eligible for nonprofit status under Section 501(c), approximately *80%* of U.S. nonprofits are 501(c)(3) charitable entities—*i.e.*, public charities (72%) and private foundations (7%).[7] Section 501(c)(3) covers entities "organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . or for the prevention of cruelty to children or animals." 26 U.S.C. § 501(c)(3). By default, an organization that falls within this category is deemed a private foundation. *Id.* § 509(a). But if such an organization has been formed for one of several

---

[2] *Key Facts on U.S. Nonprofits and Foundations*, IssueLab at 1 (Apr. 2020) ("*Key Facts*"), https://bit.ly/3cx6LG9.

[3] *Health of the U.S. Nonprofit Sector*, Independent Sector at 6 (Oct. 2020), https://bit.ly/2PkPasa.

[4] *Gross Domestic Product by Industry and Input-Output Statistics*, U.S. Department of Commerce, Bureau of Economic Analysis (Sept. 30, 2020), https://bit.ly/3wbOvts.

[5] Nonprofit Explorer, *John F. Kennedy Center for the Performing Arts*, ProPublica, https://bit.ly/39q1heb (last visited Mar. 30, 2021).

[6] Nonprofit Explorer, *Coalition for the Homeless Inc.*, ProPublica, https://bit.ly/31qgs2O (last visited Mar. 30, 2021).

[7] *See Key Facts*, *supra* note 2 at 1.

enumerated purposes—*e.g.*, it is a church, school, or hospital—or meets certain financial requirements indicative of broad public support—*e.g.*, more than one-third of its funding comes from "gifts, grants, contributions, or membership fees"[8]—the organization can qualify for designation as a public charity.[9] *Id.* §§ 509(a)(1)–(4); Internal Revenue Service, *Publication 4220: Applying for 501(c)(3) Tax-Exempt Status* at 5 (2018) ("Every organization that qualifies for tax-exempt status under IRC Section 501(c)(3) is further classified as either a public charity or a private foundation."), https://bit.ly/3cwQTDt.

The Internal Revenue Code further incentivizes nonprofits to operate as public charities and private foundations by not only exempting the organizations from taxation requirements but also making *donations* to these organizations tax deductible. Individuals can deduct donations to public charities up to 50% of their annual gross income and donations to private foundations up to 30%. *See* 26 U.S.C. §§ 170(a), (b). The aggregate size and scope of charitable donations are enormous—in 2019,

---

[8] Additionally, a public charity may not receive more than 2% of its total support from a single donor (and people related to that donor) other than a government source or other publicly supported organization. *See* Internal Revenue Service, *Publication 557: Tax-Exempt Status for Your Organization* at 34–35 (Feb. 2021), https://bit.ly/3m1XhWl ("Publication 557").

[9] Private foundations, by contrast, generally are not sustained by broad public support. Instead, they are usually controlled by a family or small group of individuals, and typically get most of their funding from a small number of sources, like a family, corporation, and/or investment income. *See* Internal Revenue Service, *EO Operational Requirements: Private Foundations and Public Charities*, https://bit.ly/3foLyjy (last visited Mar. 30, 2021).

charitable giving totaled about $450 billion, roughly 2% of U.S. GDP.[10]

As a condition of this favorable tax treatment, public charities and private foundations must provide the IRS with tax returns—recorded on IRS Form 990—and the identities of major donors—recorded on Schedule B to Form 990, 26 C.F.R. § 1.6033-2(a). Both public charities' and private foundations' Form 990s must be made publicly available, 26 U.S.C. § 6104(d)(1), but only private foundations' Schedule Bs are made publicly available, *id.* § 6104(d)(3)(a). The IRS treats Schedule Bs filed by public charities as confidential. *Id.*

B. Charities Have Inherent Accountability Problems That Can Lead To Mismanagement And Wrongdoing

The size and scope of the charitable sector underscores the need to address charities' core structural flaw: they are not inherently accountable to their donors. This lack of accountability can lead to significant business inefficiencies and, in some circumstances, fraud and other wrongdoing.

As noted, a charity must be "operated exclusively" for a public purpose. Because a charity does not provide direct returns to its donors, many donors are not inclined to closely monitor whether the charity's managers are making effective financial and programmatic decisions. Regina E. Herzlinger, *Can Public Trust in Nonprofits and Governments Be Restored?*, Harvard Business Review Magazine (Mar.–Apr. 1996) ("*Public Trust*"), https://bit.ly/3cv9MGM. And because many charities

---

[10] Independent Sector, *supra* note 3 at 7.

"serve indigent clients who cannot shop for better services," charities "often lack the competition that would force efficiency." *Id.*

Even when donors are motivated to closely monitor the financial activities of charities, most donors typically are not equipped to do so. Because charities do not make or report profits, there is no simple way to measure a charity's performance. *Id.* Instead, evaluating a charity at a minimum requires a thorough assessment of the charity's publicly available federal tax filings and any audited financial statements voluntarily published by the charity or required to be made public by state regulators. Most donors do not have the time or financial expertise to parse these documents and make such an assessment.[11]

This lack of accountability creates opportunities for mismanagement, including excessive spending on fundraising. *See Public Trust.* For example, charities directed at widely popular causes—such as veterans, police, and firefighter groups—"are not very discriminating about whom they solicit" and "conduct massive 'cold call' solicitation campaigns to millions of people in the general public, rather than to smaller, targeted groups of people who are more likely to make a donation." *Assessing Veterans Charities: Hearing Before the*

---

[11] In 2019, more than two-thirds of charitable contributions came from individual donors. *See* Independent Sector, *supra* note 3 at 7. By comparison, only 38% of equities traded on public securities markets are owned by individuals. Katie Colchin, *Who Owns Stocks in America? Individual Investors*, Securities Industry Financial Markets Association, (Oct. 10, 2019), https://bit.ly/2QILdxD. Accordingly, compared to for-profit industries, there are relatively few institutional donors that have the resources and wherewithal to analyze charities' tax filings and audited financial statements.

H. Comm. on Oversight and Government Reform 110th Cong. 100 (Dec. 13, 2007) (statement of Daniel Borochoff, President, American Institute of Philanthropy) ("Borochoff Statement"). These campaigns are "extremely inefficient" and "result[] in large fundraising expenses eating up nearly all of the contributions." *Id.*

The absence of structural accountability also makes it more difficult for donors, regulators, and the public to detect wrongdoing and fraud in the charitable sector. From 1989 to 1996, for example, the Foundation for New Era Philanthropy, a charity founded by a prominent businessman and faith leader, used an elaborate Ponzi Scheme to defraud 1,100 donors of more than $135 million. *See Hall of Shame: The Personalities Behind Charity Scandals*, CharityWatch, https://bit.ly/3cyCo2b (last updated Aug. 24, 2018). By promising that donations above a certain amount would be returned twofold, the Foundation "was able to secure donations from prominent donors such as Laurance Rockefeller," "former Treasury Secretary William Simon," and "major nonprofits like American Red Cross, World Vision, and Nature Conservancy." *Id.* The Foundation was "able to cover [its] tracks for so long by giving false information to both regulators and investors" and by using its leader's "reputation as a leading Christian figure to disarm donor suspicions." *Id.*

Such wrongdoing harms the defrauded donors, the charitable sector, and society as a whole, diverting donor dollars away from worthy causes and undermining the public's trust in charities.

II. INDEPENDENT ORGANIZATIONS WORK TO ADDRESS THESE ACCOUNTABILITY PROBLEMS, BUT POLICIES LIKE CALIFORNIA'S ARE ALSO NECESSARY

A. Independent Organizations Promote Accountability By Analyzing Charities' Public Information

Many independent organizations have formed to address the lack of accountability mechanisms in the charitable sector. The rigor of their approaches, though, is highly variable. Certain independent organizations have created online databases and crowdsourcing websites that encourage charities to upload information about themselves, such as descriptions of their programs and self-conducted impact evaluations. Some of these organizations also generate ratings. These websites make researching nonprofits more convenient for donors by housing large volumes of charity information in centralized locations. However, most organizations do little to help donors independently vet charities' self-reported information, and some compilations can even *undermine* donors' vetting efforts by allowing charities to game the ratings.

For example, uploading data is sometimes treated as an end unto itself, resulting in a nearly immediate rating improvement without any scrutiny of the what the data reveals, let alone a check for basic completeness or accuracy. Other charity raters charge the charities they rate annual fees as a condition of publicizing their ratings, presenting a clear conflict of interest and injecting into the process increased transaction costs and waste—essentially subverting the very goals of the monitoring process. *See CharityWatch Difference*, CharityWatch,

https://bit.ly/3w8sBHM (last visited Mar. 30, 2021). Thus, although these information aggregators and ratings agencies can give donors a sense of security and create an impression among the general public that the nonprofit sector is subject to robust private oversight, they in fact do little to combat ineffective or abusive practices.

A smaller set of organizations, including Amicus, has been able to play a more traditional oversight role by "perform[ing] in-depth evaluations of complex charity financial reporting, including audited financial statements, tax forms, annual reports, state filings, and other documents."[12] *Our Charity Rating Process*, CharityWatch, https://bit.ly/3w8sKei (last visited Mar. 30, 2021). Amicus uses its expertise in analyzing these publicly available documents to produce charity reports that include financial efficiency metrics indicating how a charity is spending its money, as expressed by (1) "the percent of total expenses a charity spent on its programs" and (2) "how much it cost the charity to bring in each $100 of cash donations from the public in the year analyzed." *Id.* Amicus then issues charity ratings on an "A+" to "F" scale. Although these metrics may not provide direct information about the subjective quality of a charity's programs and services, they allow donors to make a basic assessment of the charity's financial efficiency.

---

[12] Unlike many other online sources of charity data, Amicus' ratings are not derived from crowdsourcing or automated systems that take charities' self-reported information at face value, and Amicus does not charge charities to be rated or for the right to promote their ratings.

B. California's Oversight Is Necessary Because Independent Organizations Can Use Only Publicly Available Information And Lack Enforcement Power

Organizations like Amicus, however, are limited to using publicly available data and cannot bring enforcement actions. By contrast, government agencies, like the California Department of Justice, can require charities to confidentially disclose important information and can use that information to bring civil and criminal enforcement actions against wrongdoers. Accordingly, independent organizations and government regulators play complementary roles in improving donor confidence and charity accountability. The former help the public make wise giving decisions by providing research and information about specific groups—and about the accountability, financial, governance, and promotional practices (both good and bad) of charities more broadly. The latter deter potential wrongdoing by active oversight and enforcement actions.

C. Recent Examples Of Mismanagement And Fraud Show That Meaningful Accountability Requires Both Watchdog Organizations And Government Regulators

The following three examples highlight two types of wrongdoing that are hard to detect without more information than is available to the public, and thus that are best suited to investigation by government regulators with access to confidential major-donor information, rather than independent organizations like Amicus. First, charities can mark up the value "of donated goods and services in their financial statements" and redistribute these goods and services as expenditures on programs,

thereby "inflat[ing] the amount they report spending on program services." Borochoff Statement at 98. Through this practice, charities draw attention away from questionable cash expenditures and improve their performance along metrics like percent of total expenses spent on programs. Second, managers seeking to enrich themselves can direct charitable funds towards programs and services independently owned by the managers, their friends, or major donors.

1. Humanitarian Aid: Exploitation Of In-Kind Gifts

Charities play a crucial role in providing humanitarian aid. But because humanitarian aid often involves the distribution of goods—*e.g.*, food, clothing, medicine—charities focused on providing such aid often rely on donations of in-kind gifts. Such in-kind donations, however, are vulnerable to ready manipulation because a charity can inflate their value to misrepresent the charity's program expenditures and financial efficiency.

An acute example of this phenomenon is Feed the Children, an Oklahoma-based charity which "manage[s] child-focused community development programs that focus on reducing hunger and malnutrition, teaching health and promoting self-reliance in 9 countries in Asia, Africa, Latin America[] and the Caribbean."[13] In 2009, Feed the Children reported that it had received as donations, and then distributed, $544 million worth of deworming pills—about 45% of Feed the Children's 2009 income. *The Alice in Wonderland World of Charity Valuation*,

---

[13] *Our Mission*, Feed the Children, https://bit.ly/3u3gKc3 (last visited Mar. 30, 2021).

CharityWatch, https://bit.ly/3fpV1XM (Aug. 1, 2011) ("*Charity Valuation*"). A year later, however, Feed the Children changed the value of these pills to $21 million. *Id.* After multiple inquiries, Feed the Children admitted to Amicus that it had valued each pill at $9.07 in 2009 and had changed that value to $0.35 in 2010 after its previous accounting method had been deemed illegitimate. *Id.* Although Feed the Children vigorously denied that this change, or its previous valuation, was indicative of wrongdoing, the practical effect of Feed the Children's accounting decision is clear. By valuing these pills at *more than 2000%* of their market value, Feed the Children had claimed to be committing hundreds of millions of dollars to its programs and had drastically inflated its performance along the primary metric used to evaluate charities.

Feed the Children is not alone in this practice. In 2009, MAP International, a Georgia-based charity with a mission of "providing medicines and health supplies to those in need around the world,"[14] reported that it had distributed $160 million worth of deworming pills in Côte d'Ivoire—an amount equaling more than 60% of Côte d'Ivoire's total government spending on health. *See Charity Valuation*. As with Feed the Children, MAP had used an outdated accounting method that valued these pills at more than 500 times their actual value. *Id.* Similarly, in 2010, the Canadian Revenue Agency discovered that The Orion Foundation, a charity purporting to focus on AIDS relief in Africa, had "bought medicine for 30 cents per unit and valued it at $11.50 per unit," *id.*, an "amount[] far in excess of the actual value of the property" that yielded an inflated

---

[14] *Our Mission*, MAP International, https://bit.ly/2QPjATO (last visited Mar. 30, 2021).

$91 million dollars in donor receipts. Government of Canada, *The Canadian Revenue Agency revokes the charitable status of The Orion Foundation* (May 10, 2010), https://bit.ly/3fiUpTQ.

Other charities that are "not successful in soliciting donations of such products in large volumes directly from donors or companies . . . will purchase them instead." *Charity Valuation*. Often these charities will report the goods as donations and report the purchase price as a "handling fee," thereby allowing the "charit[ies] to wildly inflate the value of these products in [their] financial reporting." *Id.*

Because "charities are not required by the IRS or their auditors to disclose [publicly] what specific products they receive and distribute, or at what prices they value these items," these practices are hard to detect. *See Charity Valuation*. Indeed, Amicus was only able to uncover the details of Feed the Children's practice through a combination of rigorous financial analysis and repeated inquiries to Feed the Children. Active regulatory oversight and analysis of confidential information—exactly what California's major-donor reporting policy enables—is thus needed to identify "[c]harities placing unreasonable values on donated medicines and other aid." *Id.*

2. Cancer Fund of America: Nepotism and Lack of Governance Permit Unchecked Self-Dealing

After years of receiving "F" grades from CharityWatch, four charities that claimed to be serving cancer patients—Cancer Fund of America, Cancer Support Services, Children's Cancer Fund of America, and The Breast Cancer Society Inc.—and their leaders were sued in 2015 in a joint

action by the Federal Trade Commission, all fifty states, and the District of Columbia for deceptively soliciting more than $187 million from donors. *See Long Running Family Charity Scheme Exposed*, CharityWatch (last updated Mar. 30, 2016) ("*Long Running Scheme*"), https://bit.ly/3cvjtFm. Through nepotism, conflicts of interest, and lax board oversight, the leaders of these organizations deceived donors and exploited charitable funds for years. Instead of helping cancer patients, the leaders misused donations and inflated the value of in-kind gifts to enrich themselves, their families and friends, and professional fundraisers, who took for themselves 80% or more of the donations collected. *Id.*

The four organizations were all managed by members of the same family. By spinning out a network of interrelated organizations, the family members were able to create jobs for themselves, their families, and friends, and reward them with high salaries and personal benefits like cars, trips, luxury cruises, college tuition, gym and dating site memberships, and sports and concert tickets. *Id*. The family stacked the organizations' boards of directors with family members and friends to eliminate any independent check on their actions. *See Fed. Trade Comm'n v. Cancer Fund of America, Inc.*, No. 2:15-cv-00884-NVW, ECF No. 7 (Complaint) ¶ 48 (D. Ariz. May 18, 2015). Among many governance failings, the boards rarely reviewed financial expenditures or checked them against budgets, did not set high-level goals or engage in strategic or financial planning, and did not observe conflict of interest policies or require staff to do so. Instead, the board sat by while the organizations' leaders hired and set salaries, awarded bonuses, and granted indulgences for their family members. *Id.* ¶¶ 49–51. In these ways, the

organizations "operated as personal fiefdoms characterized by rampant nepotism, flagrant conflicts of interest, and excessive insider compensation, with none of the financial and governance controls that any bona fide charity would have adopted." *Id.* ¶ 28.

The organizations also misled donors about their low program spending and high fundraising costs by misreporting contributions and expenses related to gifts-in-kind. The organizations received and then shipped abroad prescription pharmaceuticals that could not be distributed in the United States. Although their only role was to pay the costs of shipping the goods to other groups overseas, the organizations reported the full value of the pharmaceuticals as though the organizations had received and distributed them directly. Through this scheme, the organizations inflated their reported contributions and program spending by $223 million, creating the illusion that 61% of their total spending was for program services, when in reality they spent just 21% of the funds they received on programs. *Id.* ¶¶ 113–14; *Long Running Scheme*.

The FTC lawsuit filed against these four organizations and their leaders resulted in a $76 million judgment and a settlement dissolving the organizations and permanently banning their leaders from working for nonprofit organizations. *Long Running Scheme*; Fed. Trade Comm'n, *FTC, States Settle Claims Against Two Entities Claiming to Be Cancer Charities; Orders Require Entities to Be Dissolved and Ban Leader from Working for Non-Profits* (Mar. 30, 2016), https://bit.ly/3fnPAsl.

Because of the complex valuation scheme, this fraud would have been difficult for organizations like Amicus to

detect based on publicly available information alone. Government regulators' confidential access to the identities of major donors and the amounts they gave, including details of in-kind contributions—*i.e.*, the information captured by Schedule B and required under California's confidential major-donors reporting policy—is thus critical to identifying instances of misrepresentation and self-enrichment. And more importantly, Amicus could not have taken any action as effective as the FTC and state regulators did.

3. Move America Forward: Network of Nonprofit Organization and For-Profit Companies Used to Divert Millions

In July 2019, the California Attorney General filed a lawsuit against Move America Forward, a 501(c)(3) organization that sends care packages to military troops deployed to combat areas, alleging in part that Move America Forward had used charitable contributions to unjustly enrich its officers and directors—another example of fraud more easily detected and investigated by government regulators with confidential access to major-donor information. *See People v. Move America Forward*, No. 34-2019-00261222, Dkt. No. 8 (Complaint) (Cal. Super. Ct. Jul. 24, 2019) ("MAF Complaint").

In 2008, Move America Forward paid more than 34% of its reported $1.95 million revenue to for-profit businesses owned by one of Move America Forward's directors. Similarly, in 2009, more than 47% of a reported $1.62 million went to these director-owned, for-profit business. And in 2010, that figure was 39% of a reported $1.47 million. *Id.* ¶¶ 46–48. Overall, the California Attorney General estimated that Move America Forward

paid over $1.8 million to this director's companies without ever disclosing to donors its financial relationships with the companies. *See* Cal. Dep't of Justice, *Attorney General Becerra Announces Lawsuit Against Move America Forward for Operating a Misleading Solicitations Scheme* (Jul. 24, 2019), https://bit.ly/3dfpYvd.

Chief among the charges of self-dealing was that one of this director's companies intercepted online donations to Move America Forward and skimmed between 7.5% to 10% off the donations before transferring the remainder of the donations to Move America Forward's bank account. MAF Complaint ¶ 34. Between 2008 and 2014, Move America Forward paid over $492,000 to this company for "bank service charges." *Id.* ¶ 36. The same director was also the co-founder and chief strategist of a for-profit political marketing and strategy firm that Move America Forward paid to manage its major fundraising programs and other advertising efforts, and to order items like coffee and beef jerky for Move America Forward's care packages. *Id.* ¶¶ 21, 38. For these purchases, over and above vendors costs, the director's firm charged Move America Forward a commission of an additional 17%. *Id.* ¶ 38. As a result, between January 2008 and November 2011, Move America Forward paid this firm over $820,000 in fees, commissions, and expense reimbursements. *Id* ¶ 41. Allegedly, Move America Forward never seriously considered bids from any disinterested third-party vendors for these same "services." *Id* ¶ 45. A former consultant to yet another of the director's organizations (a political action committee) said of these and other intertwined expenditures: "It was just so shady. With PACs, I know it's dirty money – it's politics. But this is a charity that's supposed to be helping the troops." Kim

Barker, *Pro-Troop Charity Misleads Donors While Lining Political Consultants' Pockets*, ProPublica (Aug. 5, 2014), https://bit.ly/3sAPxgx.

* * *

These examples of wrongdoing illustrate both the important work that independent watchdog organizations can do and the limitations they face, and therefore demonstrate the critical need for government oversight, investigation, and enforcement, at both the state and federal levels.

D. California Plays A Crucial Role By Preventing Charitable Wrongdoing Without Imposing Costs On Most Charities And Donors

As one of the few states to engage in any substantial oversight, California plays a key role in protecting donors and the public. Critically, California's confidential major-donor reporting policy strikes an appropriate balance, targeting serious abuses within the charity sector by focusing the reporting requirement on major donors and by agreeing to keep the information confidential, thereby imposing no unnecessary or unjustified burdens on charities and donors.

1. State Oversight Is Critical, But Few States Are Able or Willing to Provide It

State charity regulators are the first, and sometimes the only, line of defense to protect the public from abusive practices within the nonprofit sector. Neither the Federal Trade Commission nor the U.S. Department of Justice require charities to submit any annual filings. The Internal Revenue Service receives Form 990s and Schedule Bs, but with nearly 2 million registered nonprofits under its

purview and a primary focus on tax collection, it is generally unable to scrutinize nonprofit reporting. Because state charity regulators can require charities to register and file important documents like audited financial statements—which, unlike the Form 990, must adhere to Generally Accepted Accounting Principles and follow specific transparency-promoting rules[15]—they play a critical role in collecting the information needed to detect fraud and launch enforcement actions against bad actors.

Yet even though about 40 states require a charity to register with the state government to solicit donations within those states, few states engage in any meaningful oversight. *See Fundraising Compliance Infographic*, Harbor Compliance, https://bit.ly/3rxDKOI (last visited Mar. 30, 2021). Only about half of states require audited financial statements to be submitted with registrations, and several of those require audits only if a certain revenue threshold is met. *See Charitable Registration Audit Requirements*, Harbor Compliance, https://bit.ly/3m9Q5Yw (last visited Mar. 30, 2021). Even fewer states have regulatory bodies that provide more than just cursory oversight via annual filing requirements. Although some state regulators require a nonprofit to file IRS Form 990s, audits, notarized statements from the organization's leadership, copies of fundraising contracts, and similar documents, others

---

[15] *See Our Charity Rating Process* (explaining that audited financial statements are an important tool in identifying inconsistencies or omissions in a charity's Form 990 and also provide information not reflected on Form 990, including liabilities related to material contracts with vendors like for-profit professional fundraisers, costs from campaigns that both educate and solicit donations, and transactions among a charity and any related organizations, including 501(c)(4)s, affiliates, and subsidiaries).

require only payment of an annual fee, a copy of the Form 990, a simple postcard confirming that the organization continues to exist, or nothing at all. *See* National Association of State Charities Officials, *State Charity Registration Provisions – As of May 15, 2020*, https://bit.ly/3rA5G4B (collecting each state's initial and annual registration requirements). In certain states, these filing requirements are treated as ends unto themselves—so long as the basic forms are received, the right boxes checked, and the annual fees paid, the state looks no further. And whereas some states, like California and New York, actively investigate and initiate enforcement actions against nonprofits that violate the rules or exploit the public, *see, e.g.*, Respondent's Br. at 31 (discussing various investigations and enforcement actions), most states rarely bring lawsuits against bad actors.

Because so few states provide robust oversight of charities, the general public must rely on a handful of states—like California—to expend the resources necessary to ensure accountability, including by partnering with national regulatory bodies like the Federal Trade Commission. That few other states have the same confidential major-donor reporting policy as California is thus not a reflection on the merits of the policy. Rather, it reflects the inability or unwillingness of other States to devote real resources to combatting wrongdoing by predatory bad actors seeking to exploit the charitable sector, and an indication of the need for California's policy.

2. California's Confidential Major-Donor Reporting Policy Serves Important Accountability Interests

To operate or solicit donations in California, a charity must submit to the state Department of Justice the same

forms that the charity must submit to the U.S. Internal Revenue Service. *See* Cal. Code Regs. tit. 11, § 301. Among these forms is Schedule B of federal Form 990. Schedule B, which must be kept confidential by the Department of Justice, *id.* § 310(b), generally contains the names of all donors who gave the charity more than $5,000 or more in the tax year, 26 C.F.R. § 1.6033-2(a). Since imposing this condition on charities, California has used the information provided by Schedule Bs to bring actions against charities that defraud their donors. *See, e.g.*, Section II.C.3, *supra*. Requiring tax-exempt charities soliciting within California to submit a copy of the Schedule B form to state charity regulators is an important tool in rooting out wrongdoing of the kinds described above, including conflicts of interest, self-dealing, and tax evasion, and is critical to achieving the twin goals of donor confidence and charity accountability.

To start, having access to Schedule B helps state charity regulators to assess whether charities are manipulating in-kind gifts to mislead the public, as was the case with the international humanitarian relief organizations and the four cancer charities described above. *See* Sections II.C.1., II.C.2, *supra*. For the major donors identified on Schedule B, the form asks whether the contribution was cash or in-kind, and if in-kind, a description of the property and its fair market value. J.A. 61; *see* Respondent's Br. at 6–8. Even if a charity misrepresents the fair market value of in-kind gifts, receiving this information provides a good starting point for regulators to scrutinize that misrepresentation.

Additionally, identifying an organization's major donors can help state charity regulators understand if tax-subsidized donor dollars are being used for activities that unduly benefit the donor's political, business, family, or

other personal interests. Imagine, for example, that the brother of a politician running for office made a significant tax-deductible contribution to a public charity, and that charity then made lump-sum grants to a 501(c)(4) entity like a trade union,[16] which then conducted lobbying activities aligned with the candidate's political positions.[17] The brother's contribution would raise a serious conflict-of-interest concern, even if the 501(c)(3)'s grant to the 501(c)(4) was not earmarked for lobbying. Because of the restrictions on political activity for 501(c)(3) organizations, if a 501(c)(3) donates to a 501(c)(4), the donation must be restricted to activities that do not exceed the limitations on political activity imposed on 501(c)(3)s. In reality, of course, money is fungible. Thus, even if a 501(c)(3) provides that a grant to a 501(c)(4) is only for a particular purpose, the end result of the grant is that the 501(c)(4) has more funds overall, and can use freed up

---

[16] An organization qualifies as tax-exempt under 501(c)(4) if it is not organized for profit and operated primarily to promote social welfare to benefit the community. This organizational status is used for civic leagues or organizations dedicated to promoting social welfare and local associations of employees. Publication 557 at 47; *see also* John Francis Reilly et al., *IRC 501(c)(4) Organizations*, Exempt Organizations-Technical Instruction Program for FY 2003 (2003), https://bit.ly/3fo3rz1.

[17] The IRS prohibits 501(c)(3) charities from "directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office," but 501(c)(4) organizations can lobby the government and engage in political activity so long as those efforts further the organization's social welfare purposes. Internal Revenue Service, *The Restriction of Political Campaign Intervention by Section 501(c)(3) Tax-Exempt Organizations*, https://bit.ly/3stbHBn (last visited Mar. 30, 2021); Internal Revenue Service, *Social Welfare Organizations*, https://bit.ly/3sAkMrY (last visited Mar. 30, 2021).

general funds for other purposes, like lobbying. In these circumstances, the 501(c)(3)'s Schedule B information would materially assist state charity regulators in identifying and assessing the conflict of interest by allowing them to connect a major source of the charity's funds with its operations.

Relatedly, charities sometimes have multiple, interconnected legal entities, such as 501(c)(3) public charities, 501(c)(4) social welfare organizations, and 527 political action committees.[18] It is not uncommon for these entities to transact with one another—one entity might grant funds to another, as in the example involving the political candidate's brother above, or "reimburse" another entity for claimed shared expenses like salaries and benefits, office space, utilities, fundraising expenses, and other overhead. Because charities typically report reimbursements for overhead in lump-sum amounts, rather than in detailed breakouts, it is difficult to tell just from reviewing the charities' financial reports whether these relationships present conflicts of interest; whether the different legal entities are violating the IRS restrictions on how they can use their resources; or whether the entities are engaged in any self-dealing, such as inflating the amount of supposed "reimbursements," as in the Move America Forward case. A regulator's ability to see from a Schedule B which individuals, foundations, or companies

---

[18] A section 527 political organization "is a party, committee, association, fund or other organization . . . organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." Internal Revenue Service, *Exempt Organization Types*, https://bit.ly/3rzr6in (last visited Mar. 30, 2021).

are largely funding a charity is an important tool in rooting out these types of wrongdoing.

More generally, identifying major donors is, in part, how the IRS determines whether a 501(c)(3) organization qualifies as a public charity rather than a private foundation which, as discussed, has significant implications for the organization's donors and for the organization's governance and finances. *See supra* at 6–8. Private foundations, for example, must pay an excise tax on their net investment income, and must make minimum annual distributions—at least five percent of their assets—to avoid an excise tax.[19] They are subject to strict restrictions on self-dealing and limits on stock holdings and investments.[20] The compensation of foundation staff and board members and the amounts spent on operating costs, grants, and charitable programs are also regulated. Violations can result in taxes on the foundation, its directors, and certain related parties.[21] Schedule B assists regulators in confirming that a nonprofit is correctly reporting itself as a public charity or private foundation based on the concentration of its revenues from major donors.

Prohibiting California from requiring that charities confidentially provide Schedule B to regulators would

---

[19] Publication 557 at 31, 65.

[20] Publication 557 at 65.

[21] Internal Revenue Service, *Publication 4221-PF, Compliance Guide for 501(c)(3) Private Foundations* (Aug. 2014), https://bit.ly/31vTYgW; Internal Revenue Service, *Private Foundation Excise Taxes*, https://bit.ly/3ctLEV8 (last visited Mar. 30, 2021); Council on Foundations, *Foundation Basics*, https://bit.ly/3m5n68e (last visited Mar. 30, 2021).

undermine the State's ability to pursue these important interests and embolden people, like the leaders of the entities discussed in Part II.C, *supra*, who want to use charities as vehicles for self-enrichment or self-interest.

3. California's Confidential Major-Donor Reporting Policy Is Appropriately Circumscribed

California's confidential major-donor reporting policy serves significant regulatory and law enforcement interests, helping to root out wrongdoing like self-dealing and tax evasion, which can involve the misuse of significant amounts of money. And it does so while being cabined in two important ways.

First, the requirement at issue here is a *non-public*, confidential disclosure. *See* Respondent's Br. at 9–10, 36–37; Cal. Code Regs. tit. 11, § 310(b). Charities are not being asked to make the names or addresses of their major donors—or any donors—public. Nonprofits that compete for limited funding therefore need not worry about lists of their major donors circulating among likeminded organizations, and individuals need not worry about the general public learning which causes they choose to support or their level of disposable income.[22]

---

[22] An amicus brief filed in support of Petitioners mischaracterizes CharityWatch's approach to donor privacy, suggesting that CharityWatch "grades a charity based on the strength of its privacy policy" and "require[s] charities to protect donor privacy." *Americans for Prosperity Found. v. Rodriquez*, Nos. 19-251, 19-255, Brief of the

Second, California's policy only requires the confidential reporting of *major* donors—*i.e.*, those donors who contributed $5,000 or more to an organization in a given tax year. *See* 26 C.F.R. § 1.6033-2(a); Respondent's Br. at 6. For organizations deemed public charities because they meet the one-third public support threshold, *see supra* at 6, the requirement is even more limited: donor information must be reported only for donors who contribute at least $5,000 or more than 2% of the total contributions received by the organization, whichever is greater—meaning, *e.g.*, that a charity in this category that raises $1 million annually need only report information for donors giving at least $20,000. *See* 26 C.F.R. § 1.6033-2(a)(2)(iii)(A). Most donors give well below these levels,

---

Nonprofit Alliance Found. *et al.*, as Amici Curiae In Support Of Petitioners (U.S. Mar. 1, 2021) ("Nonprofit Alliance Found. Br.") at 27. CharityWatch is clear on its website that it "do[es] not factor privacy policy information into determining a charity's letter grade rating or into [its] benchmarks for Governance & Transparency." *Our Charity Rating Process*. To meet its "informational Privacy Policy benchmark," CharityWatch requires that a charity have a privacy policy governing the collection of donor information and that it post that policy on its website. *Id.* CharityWatch also "reports on the type of privacy policy a charity maintains"—*i.e.*, no sharing of donor information; no sharing of donor information unless the donor grants permission (opt-in); or no sharing of donor information if the donor opts out (opt-out). *Id.* CharityWatch's ratings system does not involve any judgment about what the substance of the policy should be. CharityWatch's position is simply that charities should have donor information policies and be transparent about them. To the extent the Nonprofit Alliance Foundation's amicus brief suggests that California's confidential major-donor reporting policy is at odds with CharityWatch's recommended best practices for charities, *see* Nonprofit Found. Alliance Br. at 23–24, that is wrong.

meaning California's requirement does not apply to the vast majority of donors. *See, e.g.*, Blackbaud Institute for Philanthropic Impact, *Charitable Giving Report: How Fundraising Performed in 2017* (Feb. 2018) at 14–15, https://bit.ly/3sxNTfP (collecting giving data from 8,453 organizations representing $29.7 billion in total fundraising in 2017 and concluding that the average online donation amount was $132, the median donation amount for gifts below $1,000 was $20, and the median donation amount for gifts above $1,000 was $2,000). Moreover, because most public charities are small—75% have annual revenues of under $100,000—it is highly likely that most charities do not receive donations greater than $5,000 and thus that California's policy does not implicate most charities.[23] Requiring information on only major donors significantly limits the burden on donors and charities, and focuses the state's oversight efforts on the universe of data likely to be relevant to instances of abuse.

* * *

The charitable sector relies on the public's trust to raise donations and operate for the public good. Lack of adequate oversight erodes public trust in the sector and jeopardizes the health of all charities, because without meaningful oversight, good charities start to become outwardly indistinguishable from bad ones. Moreover, every dollar misappropriated by an unethical organization is a dollar that could have been used by an ethical charity working to support the same cause. Adequate oversight thus benefits individual charities and the charitable sector at large, as well as the interests of donors and taxpayers. Regulatory schemes like California's confidential major-

---

[23] *See Key Facts*, *supra* note 2 at 2.

donor reporting policy play an important role in helping to ensure accountability and maintain the public's trust.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

KATHLEEN R. HARTNETT
Counsel of Record
JULIE VEROFF
COOLEY LLP
101 California Street
San Francisco, CA 94111
(415) 693-2000
khartnett@cooley.com

ADAM S. GERSHENSON
COOLEY LLP
500 Boylston Street
Boston, MA 02116

ELIAS S. KIM
COOLEY LLP
1299 Pennsylvania Ave., NW
Washington, DC 20004

Counsel for Amicus Curiae

March 31, 2021