Nos. 19-251 & 19-255

In the
Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,
Petitioner,

v.

MATTHEW RODRIQUEZ, ACTING ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA,
Respondent.

THOMAS MORE LAW CENTER,
Petitioner,

v.

MATTHEW RODRIQUEZ, ACTING ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF AMICI CURIAE LEGAL HISTORIANS IN SUPPORT OF RESPONDENT

ERIN BERNSTEIN
DARIN SANDS
Counsel of Record
ABIGAIL BURMAN
BRADLEY BERNSTEIN SANDS LLP
3911 HARRISON ST., SUITE 100
OAKLAND, CA 94611

DAVID FREEMAN ENGSTROM
PROFESSOR OF LAW,
BERNARD D. BERGREEN FACULTY SCHOLAR, AND ASSOCIATE DEAN
STANFORD LAW SCHOOL
559 NATHAN ABBOTT WAY
STANFORD, CA 94305

Counsel for Amici Curiae

*Gibson*Moore Appellate Services, LLC
206 East Cary Street♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

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INTEREST OF AMICI CURIAE

Amici curiae are professors from a variety of academic disciplines who, taken together, have written dozens of books and articles regarding the social and political context at the time of this Court's decision in *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958). Amici believe that a thorough examination of the historical context of *NAACP v. Alabama* and its progeny is crucial to understanding the associational rights asserted in the present case. A complete list of amici who reviewed and join in this brief is included in the attached Appendix. Amici file this brief solely as individuals and not on behalf of any institution with which they are affiliated. Affiliations are provided solely for the purpose of identification.[1]

SUMMARY OF ARGUMENT

Amici call upon the Court to preserve the balance between two fundamental principles of American democracy: transparency, on the one hand, and the First Amendment right of free association elaborated in *NAACP v. Alabama*, on the other. This Court's holdings in that case and its progeny were deeply informed by a context thick with government-sponsored public and private violence against Black citizens when the case was heard. The Court reviewed detailed evidentiary records establishing widespread

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[1] Petitioners filed a blanket consent with this Court. Respondent was given timely notice and consented in writing to the filing of this amici curiae brief under USSC Rule 37.2. Pursuant to this Court's Rule 37.6, we note that no part of this brief was authored by counsel for any party, and no person or entity other than amici curiae or their counsel made any monetary contribution to the preparation or submission of the brief.

threats—and actual commission—of terrorist acts against NAACP members and donors.[2]

The circumstances facing NAACP members and donors at the time of the Court's 1958 decision were strikingly different from those Petitioners face today. Petitioners in this case cannot point to any meaningful threat of violence if donor identities are revealed, let alone state-sanctioned violence. By contrast, in 1958, the NAACP and its members had been subjected to decades-long campaigns of persecution and violence by supporters of white supremacy and segregation. Moreover, the State of Alabama was an active participant in this campaign of terror and repression. The State both facilitated harassment and violence by private parties and used its own resources to torment and attack civil rights supporters.

Finally, in the present case, Petitioners are required to provide select donor information to the California Attorney General. That information is already confidentially shared with the IRS and may not, under California law, be publicly disclosed. By comparison, in 1958, the State of Alabama, as with the states in the subsequent NAACP membership disclosure cases, did nothing to guarantee that the NAACP's membership lists would remain confidential after disclosure. To the contrary, the Alabama government's open support of white supremacist

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[2] While this Brief does not seek to establish a test for when public disclosure of a group's members or donors triggers the associational right, *amici* think it important to note the extreme divergence between the historical context of public and private violence in which *NAACP v. Alabama* was decided and the Petitioners' thin evidentiary record of threatened or actual harms.

groups made it all but certain that any information provided to the State would quickly make its way to private parties hostile to the NAACP and its members.

This Court should consider the history of racial violence in the southern states as an important foundation of the associational right established in *NAACP v. Alabama*. That history diverges dramatically from Petitioners' thin evidentiary record of threatened or actual harms, a contrast the Court should consider in determining the balance between donor privacy and generally required disclosures necessary to investigate fraud.

ARGUMENT

I. THIS COURT DECIDED *NAACP V. ALABAMA* AMIDST PERVASIVE PRIVATE AND PUBLIC VIOLENCE AGAINST BLACK AMERICANS AND WHITE RACISTS' EFFORTS TO PREVENT THEM FROM ORGANIZING.

A. The NAACP Had Long Been a Target of Violence By Public and Private Opponents of Black Political Organizers in the South.

In *NAACP v. Alabama*, this Court applied the First Amendment against the backdrop of a longstanding pattern of violence against Black activists and political organizers in Black communities across the South. Established in 1909, in large part to combat violence against Black Americans, the NAACP's most sustained campaign to date was the ultimately unsuccessful effort to secure

federal anti-lynching legislation.[3] From the 1930s through the 1960s, the NAACP and its affiliate Legal Defense and Educational Fund spearheaded the effort to resist "legal lynchings," which railroaded Southern Black men through spurious prosecutions for serious (often capital) crimes they did not commit.[4]

The NAACP's campaigns responded to pervasive violence against Black Americans by private citizens who worked in tandem with local and state governments.[5] Although legalized slavery in the South ended in 1865, violence against the former slaves persisted.[6] Between 1865 and 1871, violence against Black Americans erupted throughout the region.[7] After Reconstruction ended and federal troops largely withdrew from the South, White Southerners worked to deny Black Americans their social and political rights, including their right to vote. Lynchings were the hallmark of this era; any kind of undesirable behavior by a Black man could trigger the formation of a lynch mob that would seize the man, torture and sometimes castrate him, and execute him in a public setting that often had a carnival atmosphere. Private and public acts of white supremacist violence were often one and the same. In

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[3] P. Sullivan, *Lift Every Voice: The NAACP and the Making Of The Civil Rights Movement* 43-77, 172-229 (2009).

[4] Eskridge, *Some Effects of Identity-Based Social Movements on Constitutional Law in the Twentieth Century*, 100 Mich. L. Rev. 2062, 2073-78, 2202-26, 2287-99 (2002).

[5] H. Shapiro, *White Violence and Black Response: From Reconstruction to Montgomery* xii (Univ. Mass. Press, 1988).

[6] Finkelman, *The Long Road to Dignity: The Wrong of Segregation and What the Civil Rights Act of 1964 Had to Change*, 74 La. L. Rev. 1039, 1045-49 (2014).

[7] *Id.*, at 6-13.

almost all cases, authorities looked the other way, and in many cases local law enforcement officials cooperated with or even participated in lynch mobs. Altogether, there were at least 1,900 documented lynchings of Black Americans between 1882 and 1901.[8]

In the decades following the end of Reconstruction and the institution of Jim Crow, Black Americans' acts of resistance to segregation and injustice continued to be met with violent repression. In response to the NAACP's successful constitutional attack on segregated public schools in *Brown v. Board of Education*, 347 U.S. 483 (1954), and other initiatives challenging segregation, *Gayle v. Browder*, 352 U.S. 903 (1956), White Southerners unleashed a new round of violence against Black Americans who sought to exercise their hard-won rights to integrated schools, equal access to interstate transportation, and voting in political primaries.[9] This wave of violence continued throughout the civil rights movement of the mid-twentieth century. Between 1955 and 1966, "white supremacists committed more than 1000 documented violent incidents aimed at stopping integration, including bombing, burning, flogging, abduction, castration, and murder."[10]

Each of these acts of violence was illegal under local or state law, and most were illegal under federal law. Yet, for decades, virtually no perpetrators were

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[8] *Id.*, at 31–32.

[9] M. Klarman, *How Brown Changed Race Relations: The Backlash Thesis*, 81 J. Am. Hist. 81, 88–90 (1994).

[10] Bermanzohn, *Violence, Nonviolence, and the Civil Rights Movement*, 22 New Political Sci. 31, 31 (2000); see also Shapiro, *supra* note 5, at 393–470.

punished by local law enforcement officials. To the contrary, government officials often took leadership roles in encouraging or committing these pervasive acts of violence. Many were in fact perpetrated by law enforcement agencies, such as the famous 1965 attack by the Alabama state police at the Edmund Pettis Bridge in Selma, Alabama on peaceful civil rights marchers supporting voting rights. As the NAACP noted in its briefing before this Court in *NAACP v. Alabama*, Black Americans were "refused official protection from threats of physical violence," even as Alabama officials "committed themselves to a course of persecution and intimidation" against those seeking desegregation.[11] NAACP leaders and members were assassinated in a number of southern states, most prominent among them Medgar Evers.[12] Rather than offering state remedies for White-on-Black violence, most southern states enacted or enforced laws based on the idea that it was pro-civil rights "agitators" and their organizations, including the NAACP, who were violating the law, not those who singled them out for acts of racial terrorism.[13]

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[11] Brief for Petitioner, *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958), No. 91, 1957 WL 87216, at *17.

[12] See B. Green, *Before His Time: The Untold Story of Harry T. Moore, America's First Civil Rights Martyr* 9–10 (1999); T. Branch, *Parting the Waters: America In the King Years 1954-63*, 825 (1988) (describing the assassination of Medgar Evers).

[13] Schmidt, New York Times v. Sullivan *and the Legal Attack on the Civil Rights Movement*, 66 Ala. L. Rev. 293, 299 (2014).

Politicians and other public officials were vocal supporters of, and even direct participants in, extra-legal violence against civil rights organizers.[14] In Birmingham, Alabama, the police department conspired with the Ku Klux Klan to ensure that buses carrying Freedom Riders would be attacked as they arrived in the city.[15] In Selma, Alabama, Sheriff Jim Clark ordered his deputies to beat volunteers who aided Black residents attempting to register to vote.[16] Clark also ordered illegal mass arrests of Black Alabamans attempting to register to vote, followed by "forced marches," where Black would-be voters were made to walk for miles while being beaten with nightsticks and shocked by electric cattle prods. As the Alabama Federal District Court observed in *Williams v. Wallace,* the decision which allowed the Selma-to-Montgomery voting rights march to continue following Bloody Sunday in 1965, these actions were not "directed toward enforcing any valid law of the State of Alabama or furthering any legitimate policy of the State of Alabama, but [were] for the purpose and have had the effect of preventing and discouraging Negro citizens from exercising their rights of citizenship." 240 F. Supp. 100, 105 (M.D. Ala. 1965).

The NAACP was also a favorite target of state governments, and disclosure of membership lists was one of the preferred tools for repression. In 1956, Mississippi tried to expose public school teachers who

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[14] M. Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* 426 (2004).
[15] R. Arsenault, *Freedom Riders: 1961 and the Struggle for Racial Justice* 136 (2006).
[16] *Id.*, at 232.

were involved with the NAACP by requiring teachers to list all organizations with which they had been involved during the previous five years. Soon afterward, Alabama, Arkansas, Louisiana, and Virginia launched their own campaigns to force the organization to disclose its membership. "The tactic here," as one of the undersigned *amici* has written, "was simple, and often quite effective: force the NAACP to disclose its membership rolls and then let the tried-and-true processes of white intimidation and retribution take over."[17]

The gravity of the threat posed by these tried-and-true tactics is evident in the lengths to which NAACP officers went to protect the organization's members from identification.[18] In the early 1960s, the NAACP's national membership secretary, Lucille Black, would mail membership cards to the NAACP's Atlanta office to be distributed individually to NAACP members. Small-town NAACP members in Georgia feared that if individual members received membership cards through the postal service, local postal officials might tip off the Ku Klux Klan or other vigilante groups that would instigate violent repression. The NAACP held secret membership ceremonies to shield its members from potential

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[17] Schmidt, *supra* note 13, at 299.

[18] The threat was hardly limited to Black NAACP members. White Southerners who were members of, donors to, or attorneys for Black civil rights activists also faced retribution and physical harm if exposed. For example, white Montgomery attorney Clifford Durr faced extreme retribution and death threats for his legal advocacy on behalf of Rosa Parks and other Black civil rights activists. See J. Salmond, *The Conscience Of A Lawyer: Clifford J. Durr And American Civil Liberties, 1899-1975*, 184–185 (1990).

violence.[19] Alabama authorities had good reason to hope that, as the state judge who initially heard *NAACP v. Alabama* declared, forced disclosure would "deal the NAACP . . . a mortal blow from which they will never recover."[20]

In short, this Court's decision in *NAACP v. Alabama* granted constitutional protection to organizations that faced persistent, credible threats of violence—violence often tolerated, encouraged, or even committed by local and state governmental authorities. The danger that NAACP supporters faced from a law mandating disclosure of membership lists was far from abstract. Since the end of the Civil War, Black Americans who refused to obey the demands of the local political order had been subjected—along with their loved ones—to grotesque acts of state-sanctioned and sometimes state-initiated violence.

B. The Court's Rulings in *NAACP v. Alabama* and its Progeny Were Rooted in Thick Evidentiary Records of Violence Against NAACP Members.

The Court decided *NAACP v. Alabama* and its progeny against more than just a background of violence directed at Black political organizing efforts. Those cases also featured evidentiary records replete with threatened and actual violence against NAACP members, amidst intensifying state efforts to discover and make public their identities.

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[19] V. Jordan, Jr. & A. Gordon-Reed, *Vernon Can Read! A Memoir* 153 (2008).

[20] M. Tushnet, *Making Civil Rights Law: Thurgood Marshall and The Supreme Court, 1936–1961*, 293 (1994).

As organized resistance to southern segregation gained momentum in the 1950s and 1960s, southern states targeted the NAACP by selectively enforcing existing laws to demand that the NAACP turn over membership lists to hostile state governments. Many states also adopted new laws that criminalized the NAACP's practice of informing citizens of their constitutional rights and referring them to civil rights attorneys.[21] In *Button,* this Court struck down one such statute, adopted by Virginia, which barred solicitation for legal business, warning that such statutes can "easily become a weapon of oppression." *NAACP v. Button*, 371 U.S. 415, 436 (1963). The clear purpose of these new laws—and the newly vigorous and selective enforcement of existing laws—was to intimidate the NAACP and expose its members to serious harm.

Justice Harlan's opinion for the Court in *NAACP v. Alabama* is the leading precedent recognizing a constitutional "freedom to engage in association for the advancement of beliefs and ideas." *NAACP v. Alabama ex rel. Patterson*, 357 U.S., at 460. In that case, the NAACP had made an "uncontroverted showing" that disclosure of its members' identities would subject those persons to illegal retaliation from both private and public actors. Because the State had advanced no neutral public interest in disclosure that could overcome the NAACP's showing of harm, the Court ruled that the state injunction violated the Due Process Clause of the Fourteenth Amendment. *Id.*, at 451.

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[21] See Schmidt, *supra* note 13, at 300-301 (describing Southern states' use of regulation of the legal profession to target the NAACP).

NAACP v. Alabama did not involve a generally applicable disclosure law. Rather, Alabama's Attorney General sought to enjoin the NAACP from operating *at all* in the State because, he contended, it had failed to properly register in Alabama as a foreign corporation—although disclosure of membership rolls was *not* a requirement for registration. *Id.* As part of that dispute, a court ordered the NAACP to turn its membership rolls over to the State; that discovery order was the action challenged in the case before the Court in 1958. And, despite the NAACP's willingness to register as a foreign corporation, rendering the dispute moot, the court refused to allow the NAACP to register, and Alabama's Attorney General continued to seek the membership rolls while offering no assurance that they would be kept confidential. *Id.*, at 464–65.

Nor should there be any doubt that the Justices were aware of the repressive context in which the NAACP operated in Alabama and other southern states, even beyond the representations made in the NAACP's briefs.[22] Government officials and private bigots were all too eager to commit physical harm, to terrorize, to destroy property, and to otherwise injure supporters of civil rights for Black Americans. Moreover, the Justices would have been aware that the victims of such violence would lack any meaningful legal recourse under the legal regime of the segregationist Jim Crow South.[23]

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[22] Brief for Petitioner, *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958), No. 91, 1957 WL 87216, at *16 n.12

[23] *Id.*, at 17 (noting that "the due process accorded petitioner should be viewed against a background of open opposition by

The Court's decision in *Bates v. City of Little Rock,* 361 U.S. 516 (1960), likewise shows the degree to which the Court decided *NAACP v. Alabama* and its progeny in reliance on a thick evidentiary record of violence against NAACP members and supporters. Relying on *NAACP v. Alabama*, the *Bates* Court overturned the convictions of two NAACP officials for violating local laws that required organizations to provide their membership lists to cities, after which the lists would be made available for public inspection. The ordinances at issue "expressly provide[d] that all information furnished shall be public and subject to the inspection of any interested party at all reasonable business hours." *Id.*, at 524.

In overturning the convictions, the Court made explicit that the case implicated the constitutional right of association because there was "uncontroverted evidence" that "public identification" of NAACP members "had been followed by harassment and threats of bodily harm." *Id.* The Court further noted that disclosure would clearly have had a "repressive effect" on the group's ability to express its point of view and mount effective challenges to the status quo. *Id.* Indeed, record evidence, the Court observed, established that "fear of community hostility and economic reprisals that would follow public disclosure of the membership lists had discouraged new members from joining the organizations and induced former members to withdraw." *Id.* And because the organization was not claiming tax exempt status, there was little (or no) support for the government's stated rationale for the

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state officials and an atmosphere of violent hostility to petitioner and its members").

ordinances. *Id.*, at 527 ("If the organizations were to claim the exemption which the ordinance grants to charitable endeavors, information as to the specific sources and expenditures of their funds might well be a subject of relevant inquiry").

Finally, in *Gibson v. Florida Legislative Investigation Commission*, 372 U.S. 539 (1963), the Court ruled that Florida could not force the NAACP to disclose its membership lists for use in a public hearing. The Court's opinion in that case was expressly situated in the historical context of the Jim Crow South:

> Where the challenged privacy is that of persons espousing beliefs already unpopular with their neighbors and the deterrent and 'chilling' effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association is consequently the more immediate and substantial. What we recently said in *NAACP v. Button*, with respect to the State of Virginia is as appears from the record, equally applicable here: 'We cannot close our eyes to the fact that the militant Negro civil rights movement has engendered the intense resentment and opposition of the politically dominant white community.'

Gibson, *supra*, at 556–57.

In short, the Court's decisions in *NAACP v. Alabama*, *Bates,* and *Gibson* were explicitly rooted in the historical context of the Jim Crow South. All three cases featured evidentiary records replete with violence and state hostility directed at the NAACP, its members, and its donors.

II. THE CONTEMPORARY CONTEXT OF PETITIONERS' REFUSAL TO MAKE CONFIDENTIAL DISCLOSURES CONTRASTS SHARPLY WITH THAT FACED BY THE NAACP IN THE 1950s AND 1960s.

As discussed above, this Court decided *NAACP v. Alabama* in the context of decades of private and public violence against racial and political minorities. As the NAACP noted in its briefing before the Court in 1957, "[t]his case cannot be considered without being viewed against the background and setting in which it arose."[24] Revisiting this historical context brings into sharp relief the many ways in which the present case differs from the civil rights cases of that earlier era. Three distinctions are particularly salient.

First, the record in this case does not contain the overwhelming evidence mustered in the civil rights-era cases that providing list of members would likely lead to public disclosures and to real physical harm; instead, the record here contains scant evidence of any substantial risk of either public disclosure or harassment. Second, the disclosures here are designed to remain confidential. Not so in *NAACP v. Alabama* or its progeny, where publicity was inevitable and in fact the real purpose of collecting the information. Finally, should either the confidentiality of the Schedule B disclosures be breached or threats of violence against donors occur, Petitioners have reliable and fair recourse through the judicial system and the actions of local, state, and federal prosecutors. NAACP members and other

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[24] Brief for Petitioner, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), at *12.

Black organizers in the Jim Crow South could rely on no such assurances.

A. Threats of Harm

Black Americans, and people of all races who supported the NAACP's challenge to white supremacy, reasonably feared not just threats, but also physical assaults, kidnapping, torture, mutilation, and murder. Teachers and other public employees feared they would lose their jobs. They justifiably believed that their homes would be severely vandalized, firebombed, and destroyed, and they justifiably worried that private racists would fire them from their jobs, boycott their stores, and also might work with government officials to deny them legal rights and seek to imprison them on manufactured charges.[25] As the NAACP explained in its briefing before this Court in *NAACP v. Alabama*, "the infringements on constitutional rights of free speech and association raised in the case at bar are directly connected to the reprisals against members indicated by the atmosphere in Alabama," an atmosphere that included "threats of violence as well as actual force."[26]

Underscoring this dangerous atmosphere was the history of violent reprisals against NAACP members, which were often directly connected to the disclosure of membership lists. In 1940, Elisha Davis, a founder of the Brownsville, Tennessee NAACP branch was kidnapped by a mob in the middle of the night.[27] The

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[25] Eskridge, 100 Mich. L. Rev., at 2073–78, 2202–26, 2287–99.
[26] Brief for Petitioner, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), at *10.
[27] Sullivan, *supra* note 3, at 237–39.

mob forced him to reveal the names of the branch's members and promised that he would be murdered if he remained in Brownsville. Four days later, the body of Elbert Williams, the Secretary of the Brownsville NAACP branch, was found floating in a river outside town.[28] He had been stabbed in the chest and beaten so severely that his head was swollen to twice its normal size.[29] Williams had been last seen being forced into a car by Tip Hunter, a local police officer who was also sheriff-elect. In the aftermath of Davis' murder, the rest of the branch's officers fled, and Hunter and his supporters attempted to drive out all of the branch's remaining members, who lived in fear that their names would be revealed.[30]

The social context of disclosure in *NAACP v. Alabama* was thus not one where African Americans supporting the NAACP merely feared that they would receive hostile telephone calls, or that racists would boycott their stores. Were that the case, one could rationalize the reprisals as part of America's normal, often uncivil, political discourse. Boycotts, in particular, are protected by the First Amendment, and they are distinct from violence, threats, and other forms of harassment.[31] Although boycotts have costs for the businesses and individuals they target, it is these consequences that have made them so "formative to the project of American democracy and [vindicating of] key First Amendment values."[32] But

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[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] See generally Lee, *Democratizing the Economic Sphere: A Case for the Political Boycott*, 115 W. Va. L. Rev. 531, 565 (2012).
[32] *Id.*, at 534.

to equate public criticism with the credible threats of violence—and actual violence—suffered by NAACP members and supporters at the time of *NAACP v. Alabama* perverts the deep connection between freedom of speech and American democracy. "[H]arsh criticism, short of unlawful action," wrote Justice Scalia, "is a price our people have traditionally been willing to pay for self-governance." *Doe v. Reed*, 561 U.S. 186, 228 (2010) (Scalia, J., concurring).

B. Nature of Disclosure

Understanding the historical context at the time of *NAACP v. Alabama* highlights a second key fact distinguishing that case from the present one. Unlike the disclosures at issue in that case, the Schedule B form at issue in the present case is provided confidentially to the California Attorney General and includes the names of a select few donors. Brief for Respondent 6. As discussed above, the *NAACP* cases all involved public disclosure of membership rolls—whether explicitly for public consumption as in *Bates*, or implicitly as in *NAACP v. Alabama* and *Gibson*. The public nature of membership disclosures was of particular interest to the Court in *NAACP v. Alabama* both because of the above-mentioned threats of violence, and because of the potential chilling effect that disclosure would have on future members. *NAACP v. Alabama, ex rel. Patterson*, 357 U.S., at 462–463.

In contrast, the disclosures here are confidential, are available only to the Attorney General's Office, and are already disclosed to the IRS. Brief for Respondent 5–6. Further, it does not appear from the record here that any individual member of Petitioners' organizations indicated that they would

be unwilling to donate if the disclosures continued, belying Petitioners' argument that disclosure would have a chilling effect. Id., at 49–50.

C. Legal Recourse

A final crucial divergence between the historical context in which *NAACP v. Alabama* arose and the present cases lies in the ability of members or donors of the organizations in question to seek effective legal recourse.

As already noted, in *NAACP v. Alabama*, the evidentiary record revealed that it was not just private persons who visited illegal and violent reprisals upon people opposed to segregation and who dissented from political orthodoxy. Public officials, too, participated in illegal and violent activities against Americans who supported civil rights. The State of Alabama actively persecuted civil rights dissenters and tolerated murders and other forms of violence against them. As the NAACP's briefing in *NAACP v. Alabama* noted, in the aftermath of *Brown*, "[w]hile negroes have been refused official protection from threats of physical violence, where negroes have protested against deprivation of their rights, state officials have been quick to curb this 'lawless' activity."[33] In the years after *Brown*,

> [t]he Governor, Lt. Governor, state legislators, the Alabama State Superintendent of Schools, local officials and even judges [ ] consistently issued public declarations that the constitutional mandate prohibiting racial

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[33] Brief for Petitioner, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), at *16–17.

> discrimination in public education should be resisted and segregation strengthened.[34]

In fact, the state trial court judge in *NAACP v. Alabama* was himself an ardent public opponent of integration. In 1957, he wrote a newspaper column arguing that civil rights supporters' "real and final goal [was] inter-marriage and mongrelization of the American people."[35]

This unyielding opposition to *Brown* and the broader goals of the civil rights movement highlights the extent to which the Alabama government had, at all levels, abandoned any pretense of adhering to the rule of law and had wholeheartedly devoted itself to maintaining segregation.[36] The plaintiffs in *NAACP v. Alabama* were not simply engaged in policy debates; they were challenging the entire state apparatus of segregation. This context of open opposition by state officials and an atmosphere of violent hostility to the organization and its members was central to the NAACP's request for an exemption from disclosure.[37]

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[34] *Id.*, at *12–14.

[35] *Id.*, at *40.

[36] Indeed, the Fifth Circuit later took judicial notice of the inextricability of the policies of segregation and the state enforcement that provided the force backing them: "We again take judicial notice that the State of Mississippi has a steel-hard, inflexible, undeviating official policy of segregation. The policy is stated in its laws. It is rooted in custom. The segregation signs at the terminals in Jackson carry out that policy. The Jackson police add muscle, bone, and sinew to the signs." *United States v. City of Jackson, Miss.*, 318 F.2d 1, 5–6 (5th Cir. 1963) (footnotes omitted).

[37] Brief for Petitioner, *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958), at *12–15.

Here, there is little evidence that similar repression to that faced by NAACP members is even remotely likely. But should that remote likelihood come to pass, there is simply no indication that local, state, or federal law enforcement officials would fail to investigate complaints of serious vandalism or threatened assault against Petitioner's supporters. Likewise, there is no evidence that local, state, or federal law enforcement officials have themselves been investigating, persecuting, or robbing churches and organizations, as occurred in midcentury Alabama.

Finally, it is worth reiterating that California law requires that Schedule Bs be kept confidential. See Cal. Code Regs. tit. 11, § 310(b). Should the Attorney General or other individual with access to Petitioners' Schedule Bs make such filings public, Petitioners could bring their claims in the appropriate venue. Again, the present context diverges dramatically from the milieu in which the NAACP operated in the 1950s and early 1960s. When the Court decided *NAACP v. Alabama*, much of the system of state and local law enforcement was aimed at enforcing the law *against*—rather than for the protection of—Black Americans and their White civil rights allies, leaving few meaningful avenues of legal redress.

In sum, *amici* respectfully believe it is important to contrast the factual records underlying this Court's decisions in *NAACP v. Alabama*, *Bates*, and *Gibson* with the contemporary context in which Petitioners' challenge arises. The decisions in *NAACP v. Alabama* and its progeny explicitly relied upon evidence of violent reprisals, near-certain disclosures to the public at large, and a disregard of enforcement by state and local officials. This Court should consider

the absence of such dire circumstances in the present case.

CONCLUSION

For the foregoing reasons, the judgment below should be affirmed.

Respectfully submitted,

Erin Bernstein
Darin Sands
Counsel of Record
Abigail Burman
Bradley Bernstein Sands LLP
3911 Harrison St., Suite 100
Oakland, CA 94611
dsands@bradleybernsteinllp.com
Counsel for Amici Curiae

David Freeman Engstrom
Professor of Law,
Bernard D. Bergreen Faculty Scholar, and
Associate Dean
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305-8610

APPENDIX

Amici, whose names and affiliations are set forth below, are professors who study legal history and subscribe to the views stated in this amici brief. To the best of their knowledge, none of them have any financial interest in the outcome of this case:

Tomiko Brown-Nagin
Daniel P.S. Paul Professor of Constitutional Law
Harvard Law School
Professor of History, Faculty of Arts and Sciences
Harvard University

Orville Vernon Burton
Judge Matthew J. Perry, Jr. Distinguished
Professor of History
Clemson University

Gabriel J. Chin
Edward L. Barrett Jr. Chair and
Martin Luther King Jr. Professor of Law
University of California, Davis, School of Law

Jane Dailey
Department of History,
the Law School, and the College
The University of Chicago

Mary L. Dudziak
Asa Griggs Candler Professor of Law
Emory University School of Law

William N. Eskridge Jr.
John A. Garver Professor of Jurisprudence
Yale Law School

Paul Finkelman
President and Distinguished Professor of History
Gratz College
President William McKinley Distinguished Professor of Law, Emeritus
Albany Law School

Paul Frymer
Professor of Politics
Princeton University

H. Timothy Lovelace, Jr.
Professor of Law
John Hope Franklin Research Scholar
Duke University School of Law

Sophia Z. Lee
Professor of Law and History
University of Pennsylvania Law School

Kenneth W. Mack
Lawrence D. Biele Professor of Law and
Affiliate Professor of History
Harvard University

Serena Mayeri
Professor of Law and History
University of Pennsylvania Carey Law School

Christopher W. Schmidt
Professor of Law and Associate Dean for
Faculty Development
Chicago-Kent College of Law