Nos. 19-251, 19-255

IN THE
Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,
Petitioner,
v.
XAVIER BECERRA, in his official capacity as Attorney General of the State of California,
Respondent.

THOMAS MORE LAW CENTER,
Petitioner,
v.
XAVIER BECERRA, in his official capacity as the Attorney General of California,
Respondent.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE U.S. CHAMBER OF COMMERCE FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases that raise issues of concern to the nation's business community.

The U.S. Chamber of Commerce Foundation ("Foundation") is a charity that harnesses the power of business for social good and educates the public on emerging issues and creative solutions that will shape the future. It does so through a variety of charitable and educational programs. For example, the Foundation's Center for Education and Workforce informs and mobilizes the business community to make a difference in education and workforce reform. Its Corporate Citizenship Center educates the public and the business community about corporate

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[1] No counsel for a party authored this brief in whole or in part, and no person or entity other than the Chamber, the Foundation, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. Counsel provided timely notice to all parties of its intent to file this brief, and all parties have given their express written consent.

citizenship programs and organizes the business community around issues such as disaster relief and the circular economy. Hiring Our Heroes connects veterans, transitioning service members, and military spouses with meaningful employment opportunities.

The Chamber and its Foundation have a strong interest in this important case. Effective education and advocacy require funding. But many donors to nonprofits prefer to remain anonymous for a variety of reasons, including to protect themselves from being targeted by extremists who hold different views, to avoid further requests for solicitations, or simply because they do not wish to publicize their charitable good deeds. Without anonymity, Chamber members and Foundation donors may be deterred from supporting the Chamber's policy advocacy and the Foundation's educational initiatives. That reluctance will be detrimental to the public and the interests of healthy democratic debate. Moreover, as the record in this case shows, donors who elect to contribute at the price of having their donations revealed may become targets for threats, harassment, and violence.

The decision by the Ninth Circuit below threatens the protections for associational privacy and donor anonymity that this Court has long recognized as vital to the functioning of civil society. In *NAACP v. Alabama*, 357 U.S. 449 (1958), the Court established a "strict test" for evaluating threats to associational privacy and donor anonymity. Under that test, the government must demonstrate that a demand for donor names or membership rolls is narrowly drawn to advance a compelling state interest. By dispensing with this Court's test, the Ninth Circuit has seriously

jeopardized associational privacy. The Ninth Circuit's decision also threatens to chill expressive association nationwide, hampering robust debate in the marketplace of ideas. For these reasons, the Chamber and its Foundation support the petitions.

SUMMARY OF ARGUMENT

This Court has repeatedly recognized that group association "undeniably enhance[s]" "[e]ffective advocacy of both public and private points of view, particularly controversial ones." *NAACP v. Alabama*, 357 U.S. at 460; *see also Buckley v. Valeo*, 424 U.S. 1, 65 (1976) ("[G]roup association is protected because it enhances 'effective advocacy.'"). Indeed, it is "[b]eyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP v. Alabama*, 357 U.S. at 460. For that reason, this Court has long held that state action encroaching on the freedom of association "is subject to the closest scrutiny." *Id.* at 460–61.

The Ninth Circuit's decision in this case compromised the protections for associational privacy that this Court has long deemed required by the First Amendment. The decision upheld the California Attorney General's blanket, up-front, governmental demand for the individual identities and addresses of major donors to private nonprofit organizations, without requiring any showing that the demand was narrowly tailored to an important government interest. Departing from the review required under

NAACP v. Alabama, the Ninth Circuit erroneously held that "narrow tailoring and least-restrictive-means tests … do not apply" to infringements on associational privacy. App. 22a.[2]

In *Buckley,* this Court applied *NAACP v. Alabama* and required the government to show that its disclosure requirements were narrowly drawn to curb the evils of campaign ignorance and corruption. The Court first required the government to show that these interests were "sufficiently important," 424 U.S. at 66, and second that the disclosures were "the least restrictive means" for achieving those interests, *id.* at 68. Third, the Court recognized that although the government had met its burden "as a general matter," minor political parties could bring as-applied challenges alleging that the disclosure requirements were "overbroad" as applied to them. *Id.* at 68–69. The Court explained that in these future cases plaintiffs would "need show only a reasonable probability" of harassment. *Id.* at 74.

The Ninth Circuit's rejection of narrow tailoring overlooked the second step of *Buckley*'s First Amendment analysis. Instead of requiring the Attorney General to show that the state's demand for Schedule B information—*i.e.*, the donor list—was minimally intrusive, the court jumped to the third step and required the Thomas More Law Center ("Law Center") and the Americans for Prosperity

[2] "App." refers to the appendix filed by the Americans for Prosperity Foundation in No. 19-251. "Law Ctr. App." refers to the appendix filed by the Thomas More Law Center in No. 19-255.

Foundation ("AFP Foundation") (collectively, "petitioners") to prove a "significant" burden on the associational rights of their donors. App. 24a, 39a; Law Ctr. App. 25a. Worse, as the five dissenting judges recognized, the Ninth Circuit interpreted that requirement in a way that made it "next-to-impossible" to meet. App. 96a.

The Ninth Circuit's analysis conflicts with *NAACP v. Alabama*, misreads *Buckley*, and erodes the First Amendment's guarantee to freedom of association. If allowed to stand, the Ninth Circuit's weakened protection for associational privacy rights will deter the free and democratic debate that the First Amendment protects. The experience of the Foundation and the many other charities participating in this case shows why. Many donors, for legitimate reasons, prefer to remain anonymous. If these donors are no longer permitted to remain anonymous, they may be deterred from supporting the Foundation's charitable and educational initiatives. The result is a less robust marketplace of ideas that is deprived of important points of view. Moreover, as the record in this case shows, donors who elect to contribute at the price of having their donations revealed may later become targets for threats, harassment, and violence.

The same is true for advocacy organizations. Although this case involves charities organized under section 501(c)(3) of the Internal Revenue Code, such as the Foundation, many charities are affiliated with social welfare organizations or business associations organized under sections 501(c)(4) and 501(c)(6), like the Chamber. Donors to those organizations, like

donors to charities, also have associational privacy rights that are put at risk by the Ninth Circuit's decision. The silencing of social welfare and business organizations is especially pernicious because, in many cases, the very reason those organizations are formed is to express a point of view.

The fix proposed by the petitioners here would go a long way toward correcting the problem created by the Ninth Circuit's rejection of narrow tailoring. As petitioners correctly point out, this Court has consistently applied *NAACP v. Alabama* when reviewing state action burdening First Amendment rights "outside the electoral context." *See* App. 87a; AFP Found. Pet. 23; Law Ctr. Pet. 21. The Chamber agrees with petitioners that this Court should clarify that narrow tailoring applies in such cases.

But the Court should not stop there. The Chamber has consistently taken the position that the freedom of speech and association deserve the same rigorous protection in the context of elections as they do in other contexts. And this Court's precedents confirm that narrow tailoring is required anytime associational privacy is threatened, even in the electoral context. Indeed, *Buckley* and its progeny "apply the same strict standard of scrutiny … developed in *NAACP v. Alabama*," 434 U.S. at 75, and require that campaign-finance disclosures be the "least restrictive means" of combatting campaign ignorance and corruption, *id.* at 68. The Court should grant the petitions to clarify that *NAACP v. Alabama* applies whenever associational privacy is threatened.

REASONS FOR GRANTING CERTIORARI

I. The Ninth Circuit Invalidated *NAACP v. Alabama*'s "Strict Test" For Reviewing Burdens On First Amendment Associational Privacy Rights.

A. The Ninth Circuit Wrongly Eliminated Narrow Tailoring From Its Analysis.

The First Amendment, applicable to the states through the Fourteenth Amendment, prohibits the enactment of laws "abridging the freedom of speech." U.S. Const. amend. I. Implicit in that guarantee is the "right to associate with others" for expressive purposes, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622 (1984); *see also Janus v. AFSCME*, 138 S. Ct. 2448, 2463 (2018), and the corresponding right to "privacy in one's associations," *NAACP v. Alabama*, 357 U.S. at 462.

Burdens on associational privacy must survive exacting First Amendment review. Since *NAACP v. Alabama*, the Court has required "the closest scrutiny" of state actions that may infringe associational privacy. 357 U.S. at 461. Under that test, the interest asserted by the government "must be compelling." *Id.* at 463. In addition, the government must establish a "substantial relation" between interest and means, *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 546 (1963), and show that the means are "narrowly drawn to prevent the supposed evil," *Louisiana v. NAACP*, 366 U.S. 293, 297 (1961). *Buckley* itself was clear that this "strict test" is "necessary because compelled

disclosure has the potential for substantially infringing the exercise of First Amendment rights." 424 U.S. at 66.

Buckley also makes clear that one aspect of the associational privacy protected by the First Amendment is privacy in one's donations to other organizations. Because "financial transactions can reveal much about a person's activities, associations, and beliefs," *Brown v. Socialist Workers '74 Campaign Comm.*, 459 U.S. 87, 97 n.13 (1982) (citation omitted), government efforts to compel disclosure of contributor names must be reviewed under "the same strict standard of scrutiny … developed in *NAACP v. Alabama*" for the protection of membership lists, *Buckley*, 424 U.S. at 75; *see also id.* at 65–66 (declining to distinguish "between contributors and members").

For example, in *Bates v. City of Little Rock*, 361 U.S. 516 (1960), the Court invalidated the state court convictions of several NAACP officers who had violated municipal ordinances requiring "disclosure of the names of the organizations' members and contributors." *See id.* at 519. More recently, the Court invalidated a federal obligation that would have required "millionaires" to disclose contributions they intended to make to their own, self-funded political campaigns. *See Davis v. FEC*, 554 U.S. 724, 744 (2008). Similarly, in *Brown*, 459 U.S. at 87, the Court held that a donor disclosure requirement imposed by Ohio was inadequately justified as applied to the Socialist Workers Party. *See id. at* 100–02. In each of these cases, as in others, the Court "closely scrutinized" the relevant state action to

ensure that the burden placed on the "privacy of association and belief guaranteed by the First Amendment" was justified. *Davis*, 554 U.S. at 744.

This case should be addressed in the same manner. Here, the Attorney General demanded that petitioners disclose "the names and addresses of their largest contributors." App. 8a. Even the Ninth Circuit acknowledged that petitioners' "evidence show[ed] that some individuals who have or would support the plaintiffs may be deterred from contributing if the plaintiffs are required to submit their Schedule Bs to the Attorney General," App. 27a (emphasis deleted), and "plainly show[ed] at least the possibility that the plaintiffs' Schedule B contributors would face threats, harassment or reprisals if their information were to become public," App. 33a (emphasis deleted). In addition, the court acknowledged the Attorney General's "poor track record" of shielding such information from public dissemination. App. 35a.

Nevertheless, the Ninth Circuit did not apply the strict test articulated by this Court—"even though," as the five dissenting judges explained, "the facts squarely called for it." App. 79a. Instead, the Ninth Circuit held that "the narrow tailoring and least restrictive means tests … do not apply here." App. 22a; *see also* App. 16a ("To the extent the plaintiffs ask us to apply the kind of 'narrow tailoring' traditionally required in the context of strict scrutiny, or to require the state to choose the least restrictive means of accomplishing its purposes, they are mistaken."). The panel even acknowledged that its decision to jettison the narrow-tailoring requirement

was dispositive. *See* App. 22a ("by applying an erroneous legal standard" "[t]he district court reached a different conclusion").

The implications of the Ninth Circuit's decision will reach far beyond this case. "Under the panel's analysis," the dissenting judges explained, "the government can put the First Amendment associational rights of members and contributors at risk for a list of names it does not need" without meeting the First Amendment scrutiny this Court has required "time and time again." App. 96a–97a. The urgency of this Court's review is even more apparent in light of the Ninth Circuit's flimsy rationale for this radical departure from First Amendment principles.

B. The Ninth Circuit Justified Its Legal Error On A Misreading Of *Buckley*.

The Ninth Circuit justified its departure from *NAACP v. Alabama* on a misreading of *Buckley*. *See* App. 15a–17a; 23a–39a; *see also* App. 104. The reasons the court gave are not persuasive. And the result, as explained below, was to turn *Buckley*'s rights-protective shield defending associational privacy into a sword that governments may wield to expose donors who would prefer to remain anonymous.

In *Buckley*, the Court considered a challenge to disclosure requirements imposed by the Federal Election Campaign Act ("FECA") on political committees and candidates for federal office, including a requirement to disclose "the name and address of everyone making a contribution" over a

certain dollar amount. 424 U.S. at 63. Applying *NAACP v. Alabama*, the Court first held that the interests articulated by the government in dispelling "campaign ignorance" and deterring "actual corruption or the appearance of corruption" were "sufficiently important." *See id.* at 66–68. Second, the Court held that "disclosure requirements certainly *in most applications* appear to be the *least restrictive means* of curbing the evils of campaign ignorance and corruption." *Id.* at 68 (emphases added). Third, the Court considered whether, notwithstanding the facial validity of FECA's disclosure requirements, they might yet be "overbroad"—that is, not narrowly tailored—as applied to some "minor parties and independent candidates." *Id.* at 68–69.

The demonstration of narrow tailoring at the second step of *Buckley* was critical to the Court's analysis. To begin, it drove the Court's conclusion that, as a general matter, FECA's disclosure requirements were the "least restrictive means" of advancing Congress's substantial interests in combatting campaign ignorance and corruption. That was so, the Court explained, because "disclosure provides the electorate with information 'as to where political campaign money comes from and how it is spent by the candidate' in order to aid the voters in evaluating those who seek federal office." 424 U.S. at 66–67 (citation omitted). In addition, the disclosure requirements would "deter actual corruption and avoid the appearance of corruption by exposing large [campaign] contributions and expenditures to the light of publicity," *id.* at 67, and permit law enforcement to "detect violations of the contribution

limitations," *id.* at 68. FECA's disclosures were, therefore, the least intrusive means of accomplishing Congress's goals in the campaign-finance context.

The demonstration of narrow tailoring was also crucial to *Buckley*'s consideration of the as-applied challenge at the third step of the analysis. The Court's holding that, "as a general matter," FECA's disclosure requirements were the "least restrictive means" of advancing Congress's substantial interests in combatting campaign ignorance and corruption, 424 U.S. at 68, provided a baseline against which the Court could measure the overbreadth asserted by minor parties and independent candidates to determine whether they should, nonetheless, be exempt from FECA's disclosures, *see id.* at 68–74. Against that backdrop, it was plain that an as-applied challenge could not succeed based on "highly speculative" and "generally alleged" facts that were not supported by "record evidence." *Id.* at 70–72. However, *Buckley* made clear that a future as-applied challenge could succeed where the evidence showed "only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals from either Government officials or private parties." *Id.* at 74; *see also Doe v. Reed*, 561 U.S. 186, 203 (2010) (Alito, J., concurring) (explaining *Buckley*'s "as-applied exemption plays a critical role in safeguarding First Amendment rights").

The Ninth Circuit erred by overlooking the second step of the *Buckley* analysis. Unlike this Court in *Buckley*, the Ninth Circuit did not require the government to prove a substantial, narrowly tailored

relationship between its disclosure requirement and its purported law enforcement interest. Instead, the court held that "narrow tailoring" and "least restrictive means tests … do not apply here." App. 22a; *see also* App. 16a ("To the extent the plaintiffs ask us to apply the kind of 'narrow tailoring' traditionally required in the context of strict scrutiny, or to require the state to choose the least restrictive means of accomplishing its purposes, they are mistaken.").

Then, because the Ninth Circuit did not recognize *Buckley*'s overbreadth analysis for what it was—an as-applied exemption to an otherwise facially valid campaign-finance disclosure requirement—the court wrenched that exemption out of context and required petitioners to show a "significant" burden on the First Amendment rights of their donors, App. 24a, 39a—even though California had not first shown that its demand was narrowly tailored as a general matter.

None of the reasons the Ninth Circuit gave for its rejection of narrow tailoring is persuasive. The Ninth Circuit claimed that this Court does not apply narrow tailoring to "disclosure requirements." App. 14a–15a. But, as the five dissenting judges observed, all the cases the Ninth Circuit cited for that proposition were from the electoral context and descended from *Buckley*. *See, e.g.*, *Doe*, 561 U.S. 186; *Citizens United v. FEC*, 558 U.S. 310 (2010). "These cases did not discuss whether disclosure was narrowly tailored to address the government's concern [because] *Buckley* already held that it is." App. 83a. *Buckley*'s progeny, in other words, simply embrace what *Buckley* established: in our "campaign finance system,"

"disclosure often represents a less restrictive alternative to flat bans on certain types or quantities of speech." *McCutcheon v. FEC*, 572 U.S. 185, 223 (2014) (plurality); *see also FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986). Far from undermining narrow tailoring, this Court's campaign-finance cases affirm the narrow-tailoring requirement by following *Buckley*.

The Ninth Circuit was also mistaken when it suggested that narrow tailoring is not ordinarily a component of "exacting scrutiny." App. 15a–16a. The petitions collect dozens of cases from this Court and the lower appellate courts applying narrow tailoring under exacting scrutiny, including disclosure cases. AFP Found. Pet. 19–21, 24–27; Law Ctr. Pet. 33–34. And the five dissenting judges likewise recognized that this Court and the lower appellate courts regularly apply narrow tailoring in cases like this one. App. 78a–79a, 83a–86a. In light of that clear body of case law, it is puzzling that the panel responded by asserting that *Buckley* "told us *NAACP v. Alabama* applied exacting scrutiny," App. 104a, given that both cases subjected disclosure obligations to a narrow-tailoring analysis. In any event, *Buckley* used the terms "exacting" scrutiny and "strict" scrutiny interchangeably. *See* 424 U.S. at 66 (explaining "[t]he *strict* test established by *NAACP v. Alabama* is necessary" (emphasis added)), 75 ("we must apply the same *strict* standard of scrutiny … [as] *NAACP v. Alabama*" (emphasis added)). Indeed, the conventional view among scholars is that *NAACP v. Alabama* applied strict scrutiny. *See, e.g.*, Erwin Chemerinsky, *Constitutional Law* 1202 (4th ed. 2011).

But the label is not what matters. What matters is that the First Amendment always requires the *government* to justify the burdens it places on associational freedoms. "The First Amendment is a limitation on government, not a grant of power," *Int'l Soc'y for Krishna Consciousness, Inc. v. Lee*, 505 U.S. 672, 695 (1992) (Kennedy, J., concurring in judgment). By straying from that foundational principle, the Ninth Circuit turned the First Amendment on its head. Instead of requiring the Attorney General to show that the state's demand for the donor information was narrowly drawn, the court required petitioners to prove a "significant" burden on the associational rights of its donors. App. 24a, 39a. This Court should not allow that error to go uncorrected.

C. This Court Should Clarify That *NAACP v. Alabama* Applies Whenever Associational Privacy Rights Are Threatened.

The petitions ask this Court to clarify that *NAACP v. Alabama* remains good law *outside* the electoral context. AFP Found. Pet. 23; Law Ctr. Pet. 21–23. The Chamber and its Foundation agree.

But the Court should also clarify that associational rights are not somehow limited in the electoral context. The Chamber has consistently taken the position that the freedom of speech and association deserve the same rigorous protection in the context of elections as they do in other contexts. *See, e.g.*, *Am. Tradition P'ship, Inc. v. Bullock*, 132 S. Ct. 2490 (2012) (amicus); *Citizens United v. FEC*, 558 U.S. 310 (2010) (amicus); *Wis. Right to Life, Inc. v.*

FEC, 546 U.S. 410 (2006) (amicus); *McConnell v. FEC*, 540 U.S. 93 (2003) (party); *Republican Party of Minn. v. White*, 536 U.S. 765 (2002) (amicus); *FEC v. Mass. Citizens for Life, Inc.*, 479 U.S. 238 (1986) (amicus). That view is consistent with "the historical evidence [which] indicates that Founding-era Americans opposed attempts to require that anonymous authors reveal their identities on the ground that forced disclosure violated the 'freedom of the press.'" *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 361 (1995); *see also McConnell v. FEC*, 540 U.S. 93, 275 (2003) (Thomas, J., dissenting). And *Buckley* confirms that protection for anonymity must be just as rigorously protected with respect to campaign-finance disclosures.

Buckley and its progeny did not create a separate test for the electoral context. Rather, as explained above, these cases "apply the same strict standard of scrutiny … developed in *NAACP v. Alabama*," 434 U.S. at 75, and require that campaign-finance disclosures be the "least restrictive means" of achieving the government's goals, *id.* at 68. *See also McCutcheon*, 572 U.S. at 223; *Massachusetts Citizens for Life*, 479 U.S. at 262. The Court should grant the petitions and clarify that *NAACP v. Alabama* applies whenever associational privacy is threatened.

II. If Allowed To Stand, The Ninth Circuit's Weakened Protection For Associational Privacy Rights Will Deter Free And Democratic Debate.

The Ninth Circuit's decision is not only wrong, it is antithetical to First Amendment values. If allowed

to stand, the decision will cause real-world harms to the associational privacy and free-speech rights of not just charities, but individuals and organizations from across the ideological spectrum in a wide variety of contexts that advocate a broad array of views.

Most immediately, the decision will subject individuals exercising their First Amendment rights to threats, harassment, and violence. This case is a perfect illustration. "During the course of trial, the Court heard ample evidence establishing that AFP, its employees, supporters and donors face public threats, harassment, intimidation, and retaliation once their support for and affiliation with the organization becomes publicly known." App. 49a. For example, the district court heard and credited testimony that "several hundred" protesters surrounded an AFP Foundation tent in Michigan and "used knives and box-cutters to cut at the ropes of [the] tent, eventually causing the large tent to collapse with AFP supporters still inside." App. 49a–50a. The district court likewise credited evidence of numerous violent threats against the AFP Foundation's supporters and major donors, such as death threats made against the grandchildren of Charles and David Koch. App. 50a; *see also* App. 78a–79a.

The same is true for the Law Center. The Law Center is regularly subjected to harassing, intimidating, and obscene communications. *See, e.g.*, Law Ctr. App. 59a ("In one particularly angry letter to [the Law Center] in response to a request for donations an opponent wrote, 'YOU FU**ING FEAR MONGERING PIECE OF S**T F**K YOU!!!'"). And

the Law Center's donors have suffered reprisals. Activists organized a boycott against a pizza chain owned by Tom Monaghan, one of the Law Center's most prominent donors. Law Ctr. App. 60a; *see also* Law Ctr. Pet. 13. The Law Center also produced evidence that some individuals sent in anonymous donations out of fear that "there would be consequences of being personally tied to [the Law Center]." *Id.* If the Ninth Circuit's decision is allowed to stand, individuals associated with groups like the AFP Foundation and the Law Center may pay a heavy price. *See* App. 50a ("this Court is not prepared to wait until an AFP opponent carries out one of the numerous death threats made against its members").

The Ninth Circuit's decision will also chill speech. This Court has "repeatedly" recognized that disclosure requirements "seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Davis*, 554 U.S. at 744 (quoting *Buckley*, 424 U.S. at 64–65). Would-be donors have many legitimate reasons to insist on anonymity—"fear of economic or official retaliation," "concern about social ostracism," the assurance "that readers will not prejudge [a] message simply because they do not like its proponent," or "merely [the] desire to preserve as much of one's privacy as possible." *McIntyre,* 514 U.S. at 341–42. Without anonymity, potential donors may be deterred from financially supporting the many expressive organizations that rely on private funding to spread their message.

The Foundation is no stranger to the deterrent effect of disclosure requirements on free speech. Many of the Foundation's donors expect anonymity

for their giving, which enables the Foundation's core activities of harnessing the power of business for social good and educating the public on emerging issues and creative solutions that will shape the future.

More broadly, the chilling effect may be especially strong for historically disadvantaged communities that all too often have been the subject of discrimination and recrimination in part as a result of their expression of unpopular viewpoints. It is surely no coincidence that many of this Court's precedents have arisen from attacks on the associational privacy rights of ethnic, religious, and even political minorities. *See, e.g.*, *Watchtower Bible & Tract Soc'y of New York, Inc. v. Vill. of Stratton*, 536 U.S. 150, 163–66 (2002) ("the Jehovah's Witnesses are not the only 'little people' who face the risk of silencing by regulations" threatening "anonymity"). Aware of that reality, dozens of charities from across the ideological spectrum—including, for example, the NAACP Legal Defense & Education Fund and the Council on American-Islamic Relations—supported the rights of the AFP Foundation below. AFP Found. Pet. 28 n.7. The suppression of these minority voices under the Ninth Circuit's decision would be especially troubling. It would also deprive the larger community of important voices. "History has amply proved the virtue of political activity by minority, dissident groups." *NAACP v. Button*, 371 U.S. 415, 431 (1963) (citation omitted).

The chill cast by the Ninth Circuit's decision will not only harm the rights of those attempting to have

their voices heard, it will also harm the public at large. Privacy in group association creates breathing space for discussion of public issues. *See Buckley*, 424 U.S. at 14. Such "speech concerning public affairs" "is the essence of self-government." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964)). Indeed, our democratic institutions necessarily rest on "our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open.'" *Ariz. Free Enter. Club's Freedom Club PAC v. Bennett*, 564 U.S. 721, 755, (2011) (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964)). When people are free to express a wide range of views—even views "spoke[n] out of hatred," "ill-will[,] or selfish political motives," *Garrison*, 379 U.S. at 73–74—our institutions gain popular legitimacy. It also becomes more likely that government officials will be held accountable to the people who elected them, and that sound ideas will be brought to the attention of the public and of public officials. *See Sullivan*, 376 U.S. at 269–73. The Ninth Circuit's decision will necessarily chill such speech about public affairs.

The burden the Ninth Circuit placed on associational privacy will also harm the broader "search for truth." *Janus*, 138 S. Ct. at 2464. Expressive association is not limited to discussion of public issues. Rather, "the beliefs sought to be advanced by association [may] pertain to political, economic, religious or cultural matters." *NAACP v. Alabama*, 357 U.S. at 460. In these areas, as in any other, "the best test of truth is the power of the thought to get itself accepted in the competition of the

market," *NIFLA v. Becerra*, 138 S. Ct. 2361, 2375 (2018) (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)), because the free exchange of ideas will put an end to "[n]oxious doctrines," *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940); *see* John Milton, *Areopagitica* 35 (Thomason ed., 1644) ("Let her and Falsehood grapple; who ever knew Truth put to the worse in a free and open encounter?"). Because "[e]ffective advocacy" of competing truth claims is "undeniably enhanced by group association," *NAACP v. Alabama*, 357 U.S. at 460, and because the realization of the "freedom to associate" often depends upon "privacy in one's associations," *id.* at 462, restrictions on associational privacy necessarily burden the search for truth.

CONCLUSION

For the foregoing reasons, and those set forth in the petitions, the Court should grant the petitions.

Respectfully submitted,

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September 25, 2019