

MESSAGING GUIDELINES

AMERICANS FOR PROSPERITY, ET AL V. RODRIQUEZ

TOPLINE:

A case about the constitutionality of California's confidential tax reporting law should not be permitted to dilute the Court's well-established precedents upholding transparency laws. Permitting the wealthy and powerful to exempt themselves from disclosure to avoid a critical public response would harm political transparency laws and undercut the free flow of information and robust debate the First Amendment is meant to protect.

OVERVIEW:

Oral arguments before the U.S. Supreme Court are scheduled for April 26, 2021.

The state of California requires 501(c)(3) nonprofits like the Americans for Prosperity (AFP) Foundation to submit, on a confidential basis, a report of their large donors to the Attorney General (AG) as part of the state's administration of its laws and regulations governing tax-exempt groups. The law applies to all charities that solicit donations or have an office in California.

The state has asserted that the law requiring nonpublic reports is necessary to effectively enforce its tax and nonprofit laws and prevent charitable fraud. In California, the Schedule B form is kept confidential and used only for governmental oversight purposes.

AFP Foundation and the Thomas More Law Center failed to submit their unredacted "Schedule B" donor reports to the AG's office. When put on notice that they had not been complying with the law, the petitioners responded by suing the state.

The petitioners argue that the law violates the donors' right to privacy under the First Amendment. They claimed that submission of the Schedule B would result in harassment and threats to donors, alleging that the billionaire Koch Brothers helming the AFP Foundation had suffered from harassment due to their political activity.

U.S. District Court Judge Manuel Real agreed with the Foundation and issued a preliminary injunction blocking enforcement of the law, barring the AG from collecting

the petitioners' Schedule B's—even on a non-public basis—but the Ninth Circuit reversed this ruling, ordering the AG only to keep the Schedule B's confidential. After a full trial on the merits, the district court again ruled in favor of the Foundation, holding that it was constitutionally entitled to an exemption from the reporting requirement on ground that compliance with the law would likely subject the Foundation's donors to harassment and reprisals. The Ninth Circuit again reversed.

Oral arguments will be heard before the U.S. Supreme Court April 26, 2021.

WHAT'S HAPPENING AT THE SUPREME COURT?

The state of California requires all nonprofit groups who are active in their state to file non-public reports with the AG listing their larger donors. The goal of this requirement is to effectively enforce its tax and nonprofit/charities laws and limit fraud. While the petitioners are seeking exemption from this law, it doesn't challenge the functionally identical non-public reporting obligations under federal tax laws (schedule B filing).

The petitioners contend that California's reporting requirement is unconstitutional, and also ask to be exempted from it based on the argument that the rule violates their donors' right to privacy under the First Amendment. In supporting its demand for a group-specific exemption from the law, AFP Foundation drew from a line of Supreme Court decisions that protect historically marginalized groups facing severe persecution and "harassment" from both private and governmental actors.

The AFP Foundation, a multimillion-dollar group advocating for free market and business interests, claimed their harassment was equal to that suffered by the NAACP in the 1950's Supreme Court case *NAACP v. Alabama*. The Foundation's evidence of potential harassment and economic reprisals included boycotts and public criticism, which are themselves speech activities associated with the First Amendment.

By conflating their circumstances with those of marginalized groups, the petitioners are attempting to expand the exemption, potentially swallowing the rules governing transparency in our elections as well.

Campaign Legal Center (CLC), Citizens for Responsibility and Ethics in Washington (CREW), Common Cause and League of Women Voters of California (LWV) [submitted an amicus brief](#) urging the Court to uphold California's law that requires charitable groups active in the state to file nonpublic tax reports – Schedule Bs – with the state AG.

TALKING POINTS

- This case has nothing to do with elections or any claimed interests in public transparency. It should not be used as a vehicle to expand exemptions from transparency in election spending to any deep-pocketed, politically active group that attracts public criticism and allow them to evade disclosure.
- By conflating their circumstances with those of marginalized groups, the petitioners threaten to expand the "harassment exemption" from disclosure laws, potentially putting other transparency measures at risk in the future, including disclosure of money spent on elections.

Q&A

- Q:** How could this case impact public disclosure laws if it isn't about public transparency?
- A:** In positioning their case at the Supreme Court, the petitioners explicitly disavow any intent to challenge public and electoral transparency laws. But wealthy special interests are claiming an exemption that would allow them to flood the system with unlimited secret money. California's law should be upheld by the Supreme Court, or at the least, the Court should rule narrowly so it does not disturb its well-established precedents endorsing public disclosure laws.
- Q:** One of the claims being made in this case is that donors to the Americans for Prosperity Foundation could be subject to harassment, similar to that of donors to the NAACP during the civil rights movement. In today's cancel culture do these claims have some validity?
- A:** No. The harassment exemption was designed to protect politically and socially marginalized groups—like the NAACP in the civil rights era or the Socialist Workers' Party during the Cold War—whose members were subject not only to private threats and violence, but also state surveillance and harassment. In this case, AFP Foundation is trying to stretch the definition of harassment so that its donors can remain anonymous and not face public criticism for their political stances.
- Q:** Why is it important that the Attorney General continue to collect information on donors, even though it isn't shared with the public?
- A:** The Attorney General has explained that it uses this confidential donor information to enforce California's non-profit regulations and to prevent charitable fraud and self-dealing. The Schedule B reporting requirement is very narrow, requiring the reporting of only a group's largest donors, which, in the cases of AFP Foundation and Thomas More, would have numbered less than a dozen a year. This limited reporting, however, ensures that the Attorney General has the information it needs to fulfil its oversight role over organizations soliciting donations in California.

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