



Understanding Donor Privacy and Free Association

WHAT'S AT STAKE?

In our democracy, Americans have the right to support causes they believe in, without fear of retaliation or harassment. One key aspect of this is the right to private giving, which falls under the constitutional protections of the First Amendment's freedoms of speech and association. But what happens when laws require nonprofits to turn over supporter's names and addresses to the government, even if they're not involved in political campaigns? That's the issue at the heart of the donor privacy debate.

Disclosure laws chill free speech and association by opening the supporters of nonprofits up to threats of harassment for exercising their speech rights or supporting causes they care about. This risk applies regardless of whether the organization focuses on political, religious, or artistic causes and has only grown in the age of cancel culture and the internet.

THE CONSTITUTIONAL FOUNDATION

The First Amendment protects not only freedom of speech but also the right to freely associate with others, whether for political, religious, cultural, or charitable purposes. Over time, courts have reaffirmed that the government must tread carefully when requiring disclosure of individuals' affiliations or support for causes, especially when such disclosure could chill participation or invite harassment.

In the landmark case *NAACP v. Alabama* (1958), the Supreme Court unanimously struck down Alabama's attempt to compel the NAACP to disclose its supporters. The Court found that disclosure would expose those supporters to "economic reprisal, loss of employment, threat of physical coercion" and that the state's interest in the information did not outweigh the constitutional harm. The First Amendment protects not just expression, but the freedom to associate privately.

In 2021, this was reinforced with the case *Americans for Prosperity Foundation v. Bonta* (2021). In *AFPF v. Bonta*, the Supreme Court struck down a California law that required all charitable nonprofits to disclose major donor names and addresses annually to the state, even when there was no evidence of wrongdoing. The Court ruled the law chilled First Amendment rights by discouraging people from supporting causes they cared about and even if disclosure is not made public, the risk of exposure or misuse by government officials means the demand for supporters is still unconstitutional.

PROTECTION WITHOUT QUALIFICATION:

One of the most important principles of the First Amendment is that constitutional rights apply to all people, not just to those who meet certain tests, give certain amounts, agree with the majority, or follow popular causes. There is growing debate around whether nonprofits should be required to disclose their donors, even when those organizations are not involved in elections or campaign activity. Protecting civic participation means standing firm on this principle: **All individuals deserve equal protection when engaging in private association, regardless of the popularity of the cause, the amount they give, or the perceived political relevance of the organization.**

Many recent calls for disclosure have been driven by a desire for political retribution or the urge to silence opponents or opinions that might be disfavored. But a law that silences one's political enemies today can and will be used tomorrow by the other side.

KEY CONSIDERATIONS:

Privacy protects all voices:

No one's political or religious beliefs, controversial or not, should be forcibly exposed by the government. Any disclosure will create a fear of harassment or retaliation, especially if someone holds views that those in power disagree with. Disclosure can also cause economic harm due to boycotts of companies for supporting certain causes or the firing of employees who associate with certain organizations.

Supporters have good reasons to want their personal information kept private:

There is a long tradition in the U.S. of anonymous philanthropy as well as anonymous writing in matters of public interest. Many of our country's Founders used anonymous speech to advocate for American independence. Many Americans would still boldly support certain causes even in the face of potential harassment, but have religious or moral reasons to donate anonymously. Disclosure not only violates their free speech rights, but also their religious freedoms.

We cannot trust the government with donor information:

The government has repeatedly proven that it cannot be trusted with private and sensitive information. A few examples include:

- The IRS inadvertently published the names, contact information, and income of 120,000 taxpayers.
- California revealed the names, addresses, and birthdays of nearly 200,000 gun owners.
- Washington, D.C. allowed public access to the private information of 56,000 health insurance customers.