

Wiley Files Two *Amicus* Briefs in Case Where Supreme Court Is Set to Resolve Important Donor Privacy Issue

March 2021

Earlier this year, the U.S. Supreme Court granted certiorari to decide a pair of First Amendment challenges to a mandate requiring all charities that operate or fundraise in California disclose to the California Attorney General's office the names and addresses of their major donors as listed on Schedule B to IRS Form 990. The charities bringing challenge the that requirement – the Thomas More Law Center and the Americans for Prosperity Foundation – argue that California's demand violates their First Amendment right to associational privacy.

Wiley filed two *amicus* briefs in support of the charities. In the first, the Chamber of Commerce of the United States and the U.S. Chamber of Commerce Foundation argue that the Ninth Circuit erred in upholding California'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." The brief explains that the Ninth Circuit's decision violated both Supreme Court precedent and the original public meaning of the Constitution. And the brief explains that if allowed to stand, the Ninth Circuit's disregard for associational privacy rights will deter the free and democratic debate protected by the First Amendment. Many donors, for legitimate reasons, prefer to remain anonymous. California's demand intrudes on that right and chills their speech and association.

Authors

Jeremy J. Broggi
Partner
202.719.3747
jbroggi@wiley.law

Practice Areas

Election Law & First Amendment Litigation
Election Law & Government Ethics
First Amendment/Commercial Speech
Issues and Appeals

In the second *amicus* brief filed by Wiley, the American Legislative Exchange Council (ALEC) similarly argued that California's disclosure mandate violates charities' First Amendment rights. In addition to explaining why that mandate is unconstitutional, ALEC's brief highlights an organized campaign to defame, harass, and boycott ALEC members as well as members of other organizations over several decades using compulsory disclosure as a tool. The brief details how public officials allied with private activists tried to obtain rosters of ALEC's "members and private contributors" for the purpose of using that information "to ruin ALEC and eliminate its ideas from the public square." Because these types of campaigns would be facilitated by the information California seeks, ALEC's brief helps to show the very real threat that California's actions pose to private associations.

These cases have generated significant public interest. More than 43 *amicus* briefs have been filed in support of the charities, signed by 22 states and more than 200 organizations from across the political spectrum. (Opposing briefs are due in late March.)

The cases are *Americans for Prosperity Foundation v. Becerra*, No. 19-251, and *Thomas More Law Center v. Becerra*, No. 19-255. Argument is set for Monday, April 26, 2021.