

# In Supreme Court *Amicus* Brief, Wiley Argues for Protection of First Amendment Associational Privacy Rights

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Washington, DC – Wiley has filed an *amicus* brief with the U.S. Supreme Court, arguing that First Amendment associational privacy rights should be protected. The brief, written on behalf of the American Legislative Exchange Council, was submitted March 1 in support of the petitioners in the consolidated cases of *Americans for Prosperity Foundation v. Becerra* and *Thomas More Law Center v. Becerra*. The *amicus* brief asks the Court to overturn a 2019 decision by the U.S. Court of Appeals for the Ninth Circuit.

The Ninth Circuit upheld a California requirement for charities to disclose names and addresses of major donors, ruling the requirement did not violate the First Amendment. The petitioners contend that the disclosure requirement violates their right to associate privately, arguing the courts should use strict scrutiny in reviewing their challenge.

The *amicus* brief filed by Wiley argues three main points:

- First, the Ninth Circuit resisted the Supreme Court's prior holdings that compulsory disclosure of the names of those participating in a private association *per se* burdens core First Amendment rights.
- Second, in evaluating the disclosure requirement, the Ninth Circuit should have applied strict scrutiny or, if termed "exacting scrutiny," it should have been tantamount to strict scrutiny.
- Third, the Ninth Circuit erred by imposing a nearly insurmountable burden on the petitioners to establish actual

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harm to their associations caused by the disclosure in order to state an as-applied First Amendment claim.

The brief summarized historical invasions of associational privacy by government officials and spotlighted the present-day rise of intolerance for differing viewpoints. “This Court’s First Amendment jurisprudence should recognize these realities,” the *amicus* brief concludes. “Efforts to silence both speakers and ideas are antithetical to one of the principal objectives of the First Amendment – to improve our democracy through robust exchange of ideas, sometimes popular, sometimes not.”

Lee E. Goodman, partner in Wiley’s Election Law & Government Ethics Practice, is Counsel of Record to the American Legislative Exchange Council in this matter. The Wiley team also includes partner Andrew G. Woodson and senior counsel Bruce L. McDonald.

To read the *amicus* brief, [click here](#).