

SCOTUS Opinion: Charitable Donors Protected From Disclosure Under First Amendment

2 Jul 2021

A California law requires charitable organizations to disclose the names and addresses of their major donors, presumably to police charitable misconduct. In *Americans for Prosperity Foundation v. Bonta*, two nonprofits refused to make that disclosure, and were threatened with suspension of their registration and fines. The nonprofits filed suit, arguing that the disclosure law violated their First Amendment rights and the donors' rights both facially and as applied. The district court, applying exacting scrutiny as set forth in *Buckley v. Valeo*, 424 U.S. 1 (1976), ruled that the law was not narrowly tailored, but the Ninth Circuit reversed.

The Court, in a 6-3 opinion by Chief Justice Roberts, reversed, holding that the exacting scrutiny standard requires that a disclosure regime be narrowly tailored, even if it is not the least restrictive means for achieving the government's interest. Under that standard, the majority held that the disclosure requirements were facially unconstitutional, as it "lacks any tailoring to the State's investigative goals" and imposed a widespread burden on donors' associational rights, thus making it unconstitutionally overbroad. Justice Thomas filed a concurrence arguing that the Court should employ strict scrutiny in all First Amendment cases, and expressing doubts about striking down the law as facially unconstitutional. Justice Alito, joined by Justice Gorsuch, also questioned whether the exacting scrutiny standard applied, but was not ready to apply strict scrutiny across the board. Justice Sotomayor, joined by Justices Breyer and Kagan, dissented, arguing that disclosure laws did not have any proven chilling effect, and that the majority was wrong to facially invalidate the law.

A link to the opinion is here: https://www.supremecourt.gov/opinions/20pdf/19-251_p86b.pdf

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TAGGED: First Amendment, strict scrutiny, Disclosure, Americans for Prosperity Foundation v. Bonta, exacting scrutiny, Buckley v. Valeo, narrowly tailored, facially unconstitutional