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Kaufman Dolowich obtains Supreme Court of the United States decision on behalf of our client: perspective from Louie Castoria, Esq., our lead attorney on the case

Why the Supreme Court of United States Decision re: Thomas More Law Center, Is Your Victory

by Louie Castoria

On July 1, 2021 the United States Supreme Court issued an important decision in my client's case that protects the privacy rights of donors who contribute to charitable organizations. The decision enhances everyone's civil rights by ensuring a robust marketplace of ideas, especially in a time when civil discourse has become distinctly uncivilized. In *Thomas More Law Center v. Bonta, 594 U.S. __ (2021, S.Ct. docket 19-251), Chief Justice John Roberts, writing for the 6-3 majority, struck down a California law requiring charities to disclose their major donors, or be barred from activities within the Golden State. Only four states make similar demands.*

Why might people object to a charity disclosing their personal information to the California Attorney General (the "A.G.")? Here are a few reasons:

- *Some charities advocate for controversial issues, and if their donors' confidential information became public, they could be subjected—as others have been—to public derision, "doxing," abuse, injury, kidnapping threats, and in some instances death threats and actual murder attempts.*
- *Once donors are disclosed, they are likely to receive many unwanted requests from other organizations for donations. They want to contribute to one cause, not to be harassed.*
- *Some major religions teach that a donor should give anonymously, for the sake of giving rather than personal recognition.*
- *Donors want to act together with others so that their combined efforts can accomplish the most good. By freely associating with those who follow the same beliefs or support the same causes, donors, big or small, can make a difference.*
- *Donors to most charities are spread across the country. Why would a donor in Ohio want his/her information in a huge database maintained by California's Attorney General?*

There are constitutional rights at stake here. Donors should be able to advocate for their deeply held beliefs without fear of retaliation, just as some of America's Founders did by using aliases. The First Amendment is our bulwark against governmental intrusion or "chilling" of our rights to peaceably assemble, speak our minds, publish our opinions, and follow our religious convictions.

Charity's value

Nonprofits account for 10 percent of the U.S. workforce and generate over $400 billion towards the U.S. economy. They provide services and advocate for myriad social causes, from health care to housing, education to ecology, you-name-it. About 80 percent of charitable organizations register with the IRS under section 501(c)(3) of the Revenue Code, and are tax-free, as are donations to them. The IRS requires "501(c)(3)" charities to file annual tax returns, including a list, "Schedule B," of their major donors, by percent or dollar amount. "Major" is a relative term. A $5,000 donation to a small nonprofit might be reportable by the charity to the Internal Revenue Service, but would be far below the reporting threshold for large nonprofits such as the Mayo Clinic or the Sierra Club. Individual donors to a charity aren't told how much money all other donors are giving, so can't be sure whether their names and other personal information will appear on Schedule B.

Against this, weigh the admissions at trial that the California A.G. has never used a Schedule B to initiate an investigation, can only identify a handful of investigations in which Schedule Bs were examined, and even in those cases could get the same information from other sources. How the charity uses the money is listed on a different schedule, which Thomas More and others do provide to the A.G. There's one thing all 501(c)(3) charities need: donors willing to help defray the costs of providing the good work they perform for others. Without a continuing flow of donations there would be no YMCA, no NAACP, no American National Red Cross. Our public policy should encourage donors to give to such organizations, not dissuade donors who prefer to remain anonymous, as did the authors of the Federalist Papers.

The *Thomas More* case

The Thomas More Law Center is a 501(c)(3) organization. It provides free legal services to clients around the country who are threatened with persecution by local governments or others in retaliation for exercising their First Amendment rights. Its advocacy is nonviolent: it advises its clients and represents them in court, same as I did. As the name implies, the Thomas More's mission is based on traditional Catholic values, though it has represented clients of other faiths. One may disagree with what the Law Center says, but we all should declare, with Voltaire, "I will defend to the death your right to say it." Registered nonprofits have provided copies of the IRS tax returns—Form 990—for years, but not all have included their Schedule B donor lists. In 2015 the California Attorney General began demanding all registered charities' Schedule Bs or face lawsuits, fines, and expulsion from the state. I was asked to defend Thomas More in the courts, if it came to that. After the A.G. rejected our polite request stay the threatened actions, Thomas More's only options were to disclose its donors—something it expressly told its donors it would not do—or to file suit. I commented to a colleague, "Doesn't this sound like the NAACP's Supreme Court case against Alabama in the 1950s?" My Complaint against the Attorney General began with a reference to *NAACP v. Alabama (357 U. S. 449, 462 (1958)), a case widely taught in law schools' Constitutional Law classes. That unanimous opinion included former California A.G. and Governor Earl Warren, by then the Chief Justice of the United States.*

We won in a bench trial in the U.S. District Court, both sides having waived their rights to a jury. We lost in the A.G.'s appeal to the Ninth Circuit Court of Appeals, which denied our request for a rehearing, over objections by five Circuit judges. We were off to the Supreme Court. Or were we? One does not simply file an appeal with the Supreme Court. The Court accepts petitions for certiorari—in English, asking the Court to hear a case—but the chances of "cert" being granted are extremely low. How low? Each year the Court receives between 9,000 and 10,000 such petitions. This term the Court heard and decided 64 cases, six or seven tenths of one percent of the total. Thomas More and its companion case, Americans for Prosperity Foundation ("AFPF") shared number 64, the last Supreme Court opinion of the term. Talk about being kept in suspense! Evidently, my analogy to NAACP was apt. As Chief Justice John Roberts wrote in his July 1, 2021 opinion for the Court's 6-3 majority, "We have also noted that '[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action,'" quoting from the NAACP case.

How the *Thomas More* decision protects all Americans' rights

As you read this you may be thinking, "I don't contribute very much to charities. Does this case affect me?"

Yes, it does. The Supreme Court found California's blanket requirement that charities disclose their Schedule B donors unconstitutional "on its face," meaning that it applies to all registered charities, not just Thomas More Law Center and AFPF.

Imagine that your nearest hospital is owned and run by a nonprofit organization. What would happen if the large donors who sustain the hospital's activities every year pulled out, for fear that they would be personally targeted by militants who disagree with the hospital's policies? In these politically volatile times "polite" disagreement has been supplanted by destruction of property, death threats, and public derision.

Thomas More has done what it can do to protect all charitable donors' right to anonymity. What can you do? If you do give to charities, look on their website (or ask them) to see if they disclose their donors to any organization other than the IRS. If they do, ask why. "Because we have to," is no longer a good reason.

The free marketplace of ideas just got a little more free. Please add your voice to the choir.

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