

## U.S. Supreme Court Accepts KD First Amendment Case

Today, the U.S. Supreme Court granted KD's petition to hear a free speech and assembly case brought by its client, the Thomas More Law Center, against the California Attorney General (the "A.G."). The case arises from a demand by the A.G.'s office that all nonprofit charities that are active in the state turn over their list of significant donors. It is the first KD case that will be heard by the high court.

San Francisco partner Louie Castoria filed and handled the case at the trial level, arguing that strict scrutiny must be applied to state laws that seek to compel member or donor lists, in keeping with Supreme Court decisions in the 1950s in favor of the NAACP, and finding that states may not compel such disclosures. The trial court granted a permanent injunction against the A.G., though the Ninth Circuit Court of Appeals overturned the judgment, setting the scene for KD's request that the Supreme Court hear the case.

Donor lists and donor anonymity may seem esoteric at first, but the Thomas More case has a real impact on all donors, large or small. During the trial, Castoria called as an expert witness the author of the only peer-reviewed study of anonymous donor behavior, who opined that many donors prefer to give anonymously, if for no other reason than not wanting to be deluged by other nonprofits asking for their money. There is also fear of reprisal. One \$20 cash donor slipped a note in the envelope, saying he did not want to be targeted by extremists. As the expert testified, when the subject is faith-based advocacy, "Religion is like fire. It intensifies the dispute and makes violence more likely."

Castoria pointed to the long history of anonymous advocacy in the United States. "Thomas Paine was a fearless advocate for American independence, yet he published *Common Sense* anonymously. There was an angry king an ocean away who would have his head, if the monarch knew which head to sever. Today, the right to advocate anonymously is just as vital to a dynamic marketplace of ideas.

"Say what you will. That's the First Amendment in a nutshell. Americans love a lively exchange of ideas, but free speech can be silenced when speakers are threatened with dire consequences for voicing their opinions. The right to remain anonymous while advocating for deeply-held, sincere beliefs is as important today as it was to Thomas Paine. Citizens who speak their mind need not subject themselves to threats of violence and derision."

The trial court heard undisputed evidence that thousands of donor lists had been inadvertently exposed to public review, and that the A.G.'s storage system was susceptible to malicious online access, as well as low-tech breaches of donor privacy. Further, the state's witnesses admitted that the donor lists are never used to initiate an investigation, and have only been referred to in five investigations. Even in those five cases the state admitted that it could have completed the investigations without the lists.

"On behalf of the Thomas More Law Center, we are very pleased that the U.S. Supreme Court granted certiorari on our petition and our client will have its day in Court," states Ivan Dolowich, Co-Managing Partner of Kaufman Dolowich & Voluck. "This is an important First Amendment case to protect the constitutional right of anonymous free speech. This grant of cert is a testament to the strength of our firm's appellate practice and the tenacity and skillful lawyering of Louie Castoria who has handled this case since its filing in the federal district court."

Thomas More's petition is supported by the U.S. government, speaking through the Solicitor General in an amicus brief, by other states, and by other nonprofit advocacy groups.

Kevin Mattessich, Partner-NY, originated the assignment and referred it to Castoria, as the case would be brought in California.