



# We must protect all voices in the public square—especially the most vulnerable

Heather Lauer

**EXECUTIVE DIRECTOR, PEOPLE UNITED FOR PRIVACY FOUNDATION**

**M**argie Christofferson was a manager at a popular 100-year-old restaurant in Los Angeles when her life was upended because of her support for a cause. A devout Mormon, she donated \$100 in support of Proposition 8, a 2008 ballot initiative to ban same-sex marriage in California (this is prior to

the Supreme Court case recognizing all same-sex marriages). Margie wasn't one to talk openly about her politics or religion, but when her donation showed up on a government list, her life changed forever.

Margie was one of numerous Americans who became targets of a harassment campaign because their donations to Prop

8 were published by the government. A boycott against the restaurant where she worked was organized. Activists trashed the restaurant on review sites, and then came the protesters who stood outside the building and shouted “Shame on you” as customers arrived. This harassment escalated to a point where the police had to be called one night to deal with an angry mob that had descended on the business. The mob left eventually, and so did customers.

Ultimately, Margie lost her job due to the disruption to business caused by the protestors. “I’ve almost had a nervous breakdown. It’s been the worst thing that’s ever happened to me,” she told a *Los Angeles Times* reporter.

Despite the harm this caused to Margie and other supporters of Prop 8, and despite United States Supreme Court decisions over the past 60+ years reaffirming our rights to privately exercise free speech and freedom of association, politicians and activists across the country are proposing an expansion of laws that would lead to more people like Margie being targeted for their beliefs.

### **Transparency is for government. Privacy is for people.**

Anonymous speech has been a cornerstone of our democratic process since the founding of the United States. The ability to support causes privately has allowed even the most vulnerable of voices to participate in debate in the public square.

Our Founding Fathers used pseudonyms to ensure the arguments they presented were the focus of debate instead of the personality of the author, and they guaranteed that right

to engage in anonymous debate for future generations within the language of the First Amendment.

While some individuals choose to speak on their own behalf and to voice their views publicly, there are many Americans who prefer to donate to causes or organizations that are better suited to represent their views. Whether someone chooses to speak out individually or rely on an organization to represent their views, their freedom of speech and association are protected under the First Amendment. Yet, in today’s society, countless politicians and activists continue pushing for changes to the law to restrict or eliminate these important rights.

In the landmark 1958 case, *National Association for the Advancement of Colored People (NAACP) v. Alabama*, the Supreme Court was asked to affirm our right to privacy in association. At that time, Alabama Attorney General John Patterson was trying to force the NAACP to report the names and addresses of their supporters. During the height of the fight for civil rights, in a segregated southern state like Alabama, it’s not difficult to imagine how dangerous the release of this information would have been for anyone who appeared on the list. The NAACP’s members would have been targeted for harassment, intimidation, violence, or worse. The NAACP fought the demand for their membership information all the way to the Supreme Court and won.

In an opinion delivered by Justice John Marshall Harlan II, he wrote: “It 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 the

forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved.”

Even though this case helped to discourage attacks on citizen privacy for many years, there is a growing push today -- at all levels of government -- to force nonprofit organizations to disclose the names and home addresses of their supporters for large and small donations alike. Proponents of these laws claim they want to “improve transparency” and “reduce corruption.” What they will accomplish is exactly the opposite. The only reason anyone needs nonprofit donor information is for the purpose of harassing, intimidating and silencing those who disagree with them. There is no other legitimate reason for why the government needs to collect, warehouse, and publicize information about causes and groups that Americans support.

Politicians and activists will use this personal information to build target lists of individuals whose views and opinions differ from theirs. These opponents of First Amendment rights won't stop until they have silenced millions of voices from participating in public debate.

This threat to our First Amendment rights is a serious threat against all Americans, regardless of individual beliefs. Whether you support the American Civil Liberties Union, National Rifle Association, Planned Parenthood, or the Salvation Army, how you spend your time, talent or treasure is a private matter that should not be exploited for political or individual gain.

## **\$100 Gets Your Name on a Government List ... Forever**

Lawmakers and radical activists who are pushing for donor disclosure like to cite examples of billionaires pouring millions of dollars into organizations that these critics oppose. But make no mistake: donor disclosure proposals aren't about billionaires, who almost always will be exposed for their beliefs regardless of disclosure requirements and who have the resources to protect themselves against subsequent attacks. **This is about activists and politicians who want to silence everyday Americans who disagree with them and their policies by canceling our First Amendment rights.**

This has already been playing out for years with donations to political campaigns. Federal law requires that any donations by an individual to a political candidate that total \$200 or more in an election cycle be disclosed in quarterly reports with the Federal Election Commission. This information is available and searchable online.

Some politicians have not hesitated to weaponize this information. Texas Representative Joaquin Castro tweeted the names and employers of 44 San Antonio residents who donated the federal maximum to President Donald Trump's re-election campaign. Representative Castro's goal was to incite public shaming of these individuals and to cause harm to their businesses. These were his own constituents who he was targeting because they disagreed with his policies.

The vast majority of charities and causes in the United States are supported by local

donors who give small gifts. On average, households donate around \$2,500 a year to charitable organizations doing good work or advancing causes in their community. Forcing those organizations to disclose their donors will have a disastrous impact on their ability to raise funds as Americans close their checkbooks for fear that they might be targeted for their \$100 donation to a cause they care about.

There is a homeless shelter in Atlanta, Georgia that houses an average of 500-700 men, women, and children each night. City officials have targeted the shelter for closure and sought to claim the land it sits on via eminent domain to build a combined fire and police station. In 2014, the shelter was behind on its water bill, owing almost \$580,000. Several anonymous donors contributed enough to enable the shelter to pay its bill. The shelter's director told local media the reason the donors wished to remain anonymous: "Any time a donor appears and is public with us, that donor gets attacked."

### **The threats are real, but there is reason to have hope**

In its 2021 ruling in *Americans for Prosperity Foundation (AFPF) v. Bonta*, the United States Supreme Court affirmed that all Americans should have the ability to exercise their First Amendment rights privately. In that case, AFPF challenged the California Attorney General's demand for donor information in annual filings, arguing that the disclosure requirement violated their freedom of association under the First Amendment. There was no state law requiring AFPF to file this information but, in 2010, the state began requiring

nonprofits to include their IRS Form 990 Schedule B form in their registration with the attorney general's office. The state claimed they needed this information for enforcement purposes and promised to keep the information confidential, but it was revealed that donor information was posted online and made publicly accessible.

As Chief Justice Roberts explained in the decision, "We are left to conclude that the Attorney General's disclosure requirement imposes a widespread burden on donors' associational rights. And this burden cannot be justified on the ground that the regime is narrowly tailored to investigating charitable wrongdoing..."

Individuals must be able to express and promote their viewpoints through associational affiliation without being exposed to a political firestorm or governmental retaliation, and this decision upholds those rights.

To ensure this decision remains the law of the land, several states are proactively advancing legislation to protect personal privacy. To date, 10 states have signed bills into law that reinforce the Supreme Court's strong decisions in *AFPF v. Bonta* and *NAACP v. Alabama*. The purpose of these privacy bills is to ensure that state officials don't find themselves in the same situation that the California Attorney General did, resulting in several years of expensive – and ultimately unsuccessful – litigation, in addition to violating the First Amendment rights of American citizens.

By passing privacy protections into law, state legislators can ensure citizen privacy for Americans who choose to give to the causes they support.

It's worth noting that the court's holding, and citizen privacy legislation, have been supported by a bipartisan coalition of groups across the country. In *AFPF v. Bonta*, nearly 300 groups from across the political spectrum filed amicus briefs, which was noted in the majority opinion: "The gravity of the privacy concerns in this context is further underscored by the filings of hundreds of organizations as *amici curiae* in support of the petitioners. Far from representing uniquely sensitive causes, these organizations span the ideological spectrum, and indeed the full range of human endeavors: from the American Civil Liberties Union to the Proposition 8 Legal Defense Fund; from the Council on American-Islamic Relations to the Zionist Organization of America; from Feeding America—Eastern Wisconsin to PBS Reno..."

Every American has the right to support causes he or she believes in without fear of harassment and intimidation, regardless of their beliefs. To change our laws to invade people's privacy and chill their participation in public life is not the way any democracy should operate, let alone the United States. We need transparency from the government, but privacy for individuals is equally, if not more, important to protect. If politicians truly care about fighting corruption, they should focus on corruption in government instead of targeting the private, constitutionally-protected activities of individuals. Furthermore, state legislatures should act immediately in response to *AFPF v. Bonta* by passing laws to ensure citizen privacy remains the law of the land.