

Nos. 19-251, 19-255

In the Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,
Petitioner,

v.

XAVIER BECERRA, ATTORNEY GENERAL OF
CALIFORNIA,
Respondent.

THOMAS MORE LAW CENTER,
Petitioner,

v.

XAVIER BECERRA, ATTORNEY GENERAL OF
CALIFORNIA,
Respondent.

**On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit**

**BRIEF OF AMICUS CURIAE CITIZEN POWER
INITIATIVES FOR CHINA IN SUPPORT OF
PETITIONERS**

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INTEREST OF AMICUS CURIAE

Citizen Power Initiatives for China is a nonprofit organization dedicated to advancing a peaceful transition to democracy in China through constitutional reform. Among other human-rights abuses, it has drawn attention to the Chinese regime's oppression of religious and ethnic minorities, including the Uighurs. Its founder and president, Dr. Yang Jianli, narrowly escaped capture as he witnessed the Tiananmen Square massacre, and following his return to China, he was imprisoned until diplomatic efforts by the international community — including the United States — procured his release. Immediately following his return to the United States, he formed Citizen Power Initiatives, which has seen at least one of its major donors imprisoned in China. As an amicus, Citizen Power Initiatives maintains an interest in protecting its donors' privacy to shield them from threats, harassment, and reprisals by the Chinese government and those acting on its behalf, so that it may continue to advocate for a peaceful democratic transition in China.

Citizen Power Initiatives receives donations from contributors in California.¹

¹ Attorneys from First Liberty Institute authored this brief as counsel for amicus curiae. No attorney for any party authored any part of this brief, and no one apart from First Liberty Institute made any financial contribution toward the preparation or submission of this brief. Petitioners have filed letters granting

SUMMARY OF ARGUMENT

The liberties that the First Amendment expressly guarantees depend on a vigorous protection of the auxiliary freedom of association. Blanket donor-disclosure regimes like California’s create an intolerable risk of exposure and thus severely abridge that freedom. Exposure of a group’s members and donors can subject them to significant reprisals by the public and therefore dissuade further membership and donations — a fact that this Court has acknowledged when marking the freedom of association’s contours.

In adjudicating this case, this Court also should account for the modern rise of “cancel culture,” and for the reprisals that domestic and foreign governments direct against those who contribute to groups that dare speak against their orthodoxy. Among the victims of such reprisals are donors to religious ministries and charities and donors to organizations that hold foreign governments accountable for their human-rights abuses. California’s regime — and the Ninth Circuit’s mistaken approach upholding it — are insufficient to protect groups from these kinds of reprisals, just as they are insufficient to protect them from reprisals by the public.

blanket consent to amicus curiae briefs pursuant to Supreme Court Rule 37.3(a), and Respondent has consented to the filing of this brief. Therefore, all parties have consented to the filing of this brief.

ARGUMENT

I. Disclosure May Subject Donors to Reprisals Not Only by the Public, but Also by Domestic and Foreign Governments.

The First Amendment expressly guarantees the free exercise of religion, the freedoms of speech and of the press, and the right of peaceful assembly and petition, but these cherished liberties necessarily imply the freedom of association. As this Court has recognized, “[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association,” and “[i]t is beyond debate that freedom to engage in association for the advancement of beliefs and ideas” is protected by the Constitution. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958). Likewise, group association is vital to — and an implicit component of — the free exercise of religion. *See Gibson v. Fla. Legislative Investigative Comm’n*, 372 U.S. 539, 565 (1963) (Douglas, J., concurring) (“Registering as a student in a school or joining a faculty is as vital to freedom of expression as joining a church is to the free exercise of religion.”).

The freedom of association would mean little if the government had carte blanche to compel the disclosure of an association’s members or donors, and this Court, therefore, has subjected such disclosures to “exacting scrutiny.” *Buckley v. Valeo*, 424 U.S. 1, 64 (1976). When exposed, members and donors may endure “harassment or retaliation,” *id.* at 68, “economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility,” *Patterson*, 357 U.S.

at 462. These consequences may “induce members to withdraw from the [group] and dissuade others from joining it,” *id.* at 463, and may “deter some individuals who otherwise might contribute” from making donations, *Buckley*, 424 U.S. at 68. In this respect, compelled disclosure of an organization’s members and donors can have the same chilling effect as “[a] requirement that adherents of particular religious faiths or political parties wear identifying arm-bands.” *Patterson*, 357 U.S. at 462 (quoting *Am. Communications Ass’n v. Douds*, 339 U.S. 382, 402 (1950)).

American society may look quite different today than it did in 1958, but this Court’s observations regarding the chilling effect of compelled disclosures still ring true. In today’s “cancel culture” climate, donors may become targets for harassment and economic reprisal simply because they express support for traditional values or give to venerable religious ministries and charities. Even a well-known fast-food chain fell victim to this trend. *See* David Roach, *Chick-fil-A Stops Giving to Salvation Army, FCA Amid LGBT Protests*, Christianity Today (Nov. 18, 2019), <http://bit.ly/3qJUWkE>. Indeed, bedrock values like religious liberty that enjoyed near-unanimous bipartisan support just three decades ago are now met with overt hostility by powerful segments of modern society. *See, e.g.*, Robert King, *RFRA: Boycotts, Bans, and a Growing Backlash*, Indianapolis Star (Apr. 2, 2015), <http://bit.ly/2ZHtjNa>. And these threats to associational freedom can come not only from the public, but also from governments that reinforce cancel culture with cancellations of their own. *See, e.g.*, Acacia

Coronado, *Chick-fil-A No Longer Pursuing Restaurant at San Antonio Airport After Chain's Plans Denied More than a Year Ago*, USA Today (Sept. 14, 2020), <http://bit.ly/2ZE7ZIr>. At least one state has determined that this latter problem of cancellation-by-government warrants a legislative remedy, particularly for donors to religious organizations. *See* 2019 Tex. Gen. Laws 666 (June 10, 2019) (enacting Chapter 2400 of the Texas Government Code, "Protection of Membership in and Support to Religious Organizations," Tex. Gov't Code §§ 2400.001–.005).

As disturbing as these trends are, even more disturbing is the intimidation and coercion that may befall contributors to organizations that combat corruption and human-rights abuses by foreign powers — something that Citizen Power Initiatives for China knows all too well. Citizen Power Initiatives advocates for a peaceful transition to democracy in China. *See* About Us, Citizen Power Initiatives for China, <https://www.citizenpowerforchina.org/about-us/>.² It furthers its mission through a combination of research and advocacy, monitoring the Chinese government's human-rights abuses and working with NGOs and democratic governments around the world to curtail these abuses and rescue Chinese political prisoners. The organization does groundbreaking work to

² From time to time, amicus Citizen Power Initiatives' website is offline due to cyber attacks. The links to its website that are cited in this brief were operational at the time that the brief was written, but amicus cannot guarantee that they will be continuously operational during the pendency of this case. If any link does not function at the time that this brief is reviewed, the reader may try to access the link at a later time.

highlight the communist regime's exploitation and abuse of the Uighurs. Its interethnic interfaith leadership conferences — begun with guidance from the Dalai Lama — bring together religious and ethnic minorities to foster cooperation in the movement for a democratic China that respects human rights, including religious freedom. And most recently, it documented China's mismanagement of the COVID-19 pandemic. *See* Initiatives, Citizen Power Initiatives for China, <https://www.citizenpowerforchina.org/initiatives/>.

Not surprisingly, these activities have garnered reprisals from the Chinese government, which has attacked and sought to discredit Citizen Power Initiatives. For example, on August 22, 2019, the Chinese Foreign Ministry sent a 42-page dossier to various international media outlets concerning Hong Kong's "anti-extradition bill" protests. That dossier smeared Citizen Power Initiatives, its interethnic interfaith leadership conferences, and its founder and president, Dr. Yang Jianli. *See* Press Release, *Statement on the Chinese Foreign Ministry's Smearing of Citizen Power Initiatives for China and Its Founder and President, Dr. Yang Jianli*, Citizen Power Initiatives for China (Aug. 25, 2019), <http://bit.ly/3skNtZr>. And in 2018, a Chinese diplomat repeatedly heckled Dr. Yang as he delivered remarks before the U.N. Human Rights Council. *See Chinese Dissident, Official Trade Barbs at UN Rights Body*, AP News (Mar. 20, 2018), <https://bit.ly/3qOs4aT>.

Unfortunately, the Chinese government's reprisals do not stop at words. Nearly all of Citizen Power

Initiatives' donors and potential donors have significant ties to China — family, business, citizenship — and are vulnerable to all manner of coercion. In 2019, China imprisoned one consistent major donor who is based in the country and had yearly travels to the United States. Another major donor discontinued his support after learning that the Chinese government had discovered his donations. In addition, leaders of the organization have spoken with many who are sympathetic to their cause but who cannot lend support for fear of losing their business or subjecting themselves and their families to persecution.³

The importance to Citizen Power Initiatives of its donors' privacy, and the consequences of exposure, are unsurprising given the reprisals that its leadership themselves have endured. Once a rising star in the Chinese Communist Party, Dr. Yang witnessed — and narrowly escaped from — the Tiananmen Square massacre. Upon his return to China to support the non-violent labor movement, he was arrested and imprisoned, with much of that detainment spent in solitary confinement. Only after an international outcry, including a unanimous resolution by the U.S. House of Representatives and a bipartisan letter by 40 U.S. Senators, did Dr. Yang obtain his freedom. *See Our Team – Board of Directors, Citizen Power Initiatives for China*, <https://www.citizenpowerforchina.org/about-us/our-team/>; *see also* H. Res. 199 (108th Cong.); John Ruwitch, *U.S. Senators Step Up*

³ In sharing these accounts, amicus Citizen Power Initiatives has taken care to avoid disclosing details that would further jeopardize the safety of the individuals involved.

Campaign to Free Academic, The Guardian (June 16, 2005), <https://bit.ly/2NRvk6S>.

At age 16, Citizen Power Initiatives board member Dr. Huang Liping entered a prestigious university in Beijing, eventually earning a Ph.D. in mathematics and becoming one of China's few home-grown university professors in the first generation following the Cultural Revolution. As a young professor, he went on to help lead the pro-democracy student uprising in Tiananmen Square. These activities cost him his prized professorship. He then left for the United States and joined the international movement for freedom in China. *See Our Team – Board of Directors*, Citizen Power Initiatives for China, <https://www.citizenpowerforchina.org/about-us/our-team/>.

This Court's precedents rightly acknowledge the reprisals that can follow disclosure and exposure of a group's members and donors. And they recognize that these reprisals frequently are directed by "private community pressures" toward those who are "dissident[s]" from the prevailing orthodoxy. *Patterson*, 357 U.S. at 462, 463. In adjudicating these cases, amicus Citizen Power Initiatives respectfully asks that this Court also account for the reprisals that domestic and foreign governments may direct toward those who donate to groups that advocate values and freedoms that those governments disfavor.

II. California’s Regime and the Ninth Circuit’s Approach Are Inadequate to Protect Against the Range of Reprisals that Donors Can Suffer.

California requires all charitable organizations that solicit contributions within the state to register and file periodic reports with its Attorney General, including a list of the names and addresses of all of their major donors. Cal. Gov’t Code §§ 12548–12586; Cal. Code Regs. tit. 11, § 301 (2020). To be sure, the federal government also collects this information, but it does so to administer a federal tax benefit, and federal law requires that its collection of this information remain private, with civil and criminal penalties for disclosure. *See* 26 U.S.C. §§ 6104, 7213, 7431. By contrast, California has no analogous regulatory need for the information, and California law imposes no civil or criminal penalties for its disclosure. *See* Cal. Code Regs. tit. 11, § 301(b) (2016). Indeed, notwithstanding an informal policy of non-disclosure (later codified during the litigation), the district court found a “pervasive, recurring pattern of uncontained Schedule B disclosures—a pattern that has persisted even during this trial—[that] is irreconcilable with the Attorney General’s assurances and contentions” of confidentiality. *Ams. for Prosperity Found. v. Harris*, 182 F. Supp. 3d 1049, 1057 (C.D. Cal. 2016). There also was “substantial evidence” that California’s registry was “an open door for hackers” using unsophisticated techniques. *Ams. for Prosperity Found. v. Becerra*, 919 F.3d 1177, 1185 (9th Cir. 2019) (Ikuta, J., dissenting from denial of reh’g en banc).

The Ninth Circuit upheld California’s global demand for donor information and its swiss-cheese data-privacy regime without requiring the state to demonstrate that its demand is narrowly tailored to its asserted law-enforcement interest. *Ams. for Prosperity Found. v. Becerra*, 900 F.3d 1000, 1008 (9th Cir. 2018). That approach fails to address the intolerable risk of exposure that California’s regime has created and is wholly inadequate to protect the freedom of association from the kinds of reprisals set forth above. As Petitioners demonstrated, the district court found, and the dissenting Ninth Circuit judges acknowledged, California’s blanket disclosure system has resulted in the exposure “of around 1,800 confidential Schedule Bs,” and the vulnerability of “every confidential document in the registry—more than 350,000 confidential documents”—to hacking and exposure “merely by changing a single digit at the end of the website’s URL.” *Ams. for Prosperity Found.*, 919 F.3d at 1184–85 (Ikuta, J., dissenting from denial of reh’g en banc). These are intolerable risks that groups like Citizen Power Initiatives cannot afford to take.

Moreover, if this Court upholds California’s blanket disclosure regime and the Ninth Circuit’s approach, it will compound these intolerable risks and their infringement of associational freedom. For one thing, such a ruling necessarily would signal approval for the similar blanket disclosure regimes of at least two other states. *See* 19-251 Arizona Amicus Br. 6. One of them — New York — is the financial center of the United States. While groups seeking privacy for their donors could forgo fundraising in California and New York (not to mention the third blanket-disclosure state,

Hawaii), doing so could significantly curtail their donations. That certainly would be the case for Citizen Power Initiatives. For the past three years, donations from New York have constituted more than half of its total support. Forgoing fundraising in blanket-disclosure jurisdictions thus is not a viable option for the organization.

In addition, the Ninth Circuit's approach, if validated by this Court, may invite additional jurisdictions to adopt regimes similar to California's. A multiplicity of blanket-disclosure regimes compounds the risk to the freedom of association. As the district court noted, a single exposure is all that is needed to invite harassment and reprisals, and once a donor list disseminates via the internet, "there is no way to meaningfully restore confidentiality." *Ams. for Prosperity Found.*, 182 F. Supp. 3d at 1057. The more jurisdictions and government employees that have access to groups' donor lists, the greater the risk of direct exposure (whether inadvertent or otherwise) and the greater the number of targets for hackers.

As to the latter concern, even crediting (over the district court's contrary factual findings) California's assurance that it has resolved the data-security issues that made its registry vulnerable to even the most rudimentary hacking techniques, *see Ams. for Prosperity Found.*, 903 F.3d at 1018–19, that assurance is of little comfort to groups like Citizen Power Initiatives whose donor lists are a target for sophisticated hacks by foreign powers and their agents. "Nothing is perfectly secure on the internet in 2018," *id.* at 1018, but perhaps one could reasonably demand

that a state, at the very least, refrain from publicly posting donor names and addresses, and that it hide non-public URLs by more than a single digit. *But see Ams. for Prosperity Found.*, 919 F.3d at 1184–85 (Ikuta, J., dissenting from denial of reh’g en banc). These basic data-privacy measures, however, are no match for the sophisticated techniques of foreign hackers. *See, e.g.*, Justin Sink & John Walcott, *Chinese Hackers Said to Breach Federal Personnel Data Files*, Bloomberg News (June 4, 2015), <http://bloom.bg/2MoCgbe>; *see also, e.g.*, David E. Sanger, et al., *Scope of Russian Hacking Becomes Clear: Multiple U.S. Agencies Were Hit*, N.Y. Times (Dec. 14, 2020), <http://nyti.ms/37Gwglj>.

Amicus accepts that narrowly drawn disclosures may be necessary to fulfill genuine law-enforcement purposes, and such targeted disclosures will always carry some quantum of risk. But case-by-case demands do not pose nearly the same threat to donor privacy that global demands do. Blanket disclosure regimes like California’s routinely put *all* donor information at significant risk of exposure by incompetent government employees and hacks by domestic and foreign actors. And they improperly impose this risk for the sake of mere “investigative efficiency” rather than investigative necessity. *Ams. for Prosperity Found.*, 919 F.3d at 1185 (Ikuta, J., dissenting from denial of reh’g en banc).

* * *

In sum, amicus Citizen Power Initiatives is concerned that upholding California’s blanket compelled-disclosure regime would significantly

threaten its contributions and, therefore, its ability to associate and advocate its views. Given its advocacy for a democratic China and the reprisals that its leaders and donors already have faced, Citizen Power Initiatives fears that compelled disclosure of its donors would lead to their exposure, to persecution of those in China, to reprisals against the families and business interests of those outside China, and to a shutdown of nearly all of the organization's sources of income. Amicus respectfully urges the Court to consider these threats as it evaluates California's blanket disclosure regime. People's lives and livelihoods are at stake.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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