

Nos. 19-251, 19-255

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In the  
**Supreme Court of the United States**

AMERICANS FOR PROSPERITY FOUNDATION,  
*Petitioner,*

v.

XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
*Respondent,*

THOMAS MORE LAW CENTER,  
*Petitioner,*

v.

XAVIER BECERRA, in his official capacity as  
Attorney General of the State of California,  
*Respondent.*

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

**BRIEF OF *AMICUS CURIAE* INDEPENDENT  
WOMEN'S LAW CENTER IN SUPPORT OF  
PETITIONERS**

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## **CORPORATE DISCLOSURE STATEMENT**

Independent Women's Law Center ("IWLC") is a project of Independent Women's Forum ("IWF"), a non-profit corporation that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. IWF does not have a parent corporation and no publicly held corporation owns 10% or more of its stock.

**TABLE OF CONTENTS**

CORPORATE DISCLOSURE STATEMENT..... i  
TABLE OF AUTHORITIES.....iii  
STATEMENT OF INTEREST ..... 1  
SUMMARY OF THE ARGUMENT ..... 2  
ARGUMENT..... 3  
I. Anonymous Giving By Women Was A Critical  
Feature Of Pivotal Movements Throughout  
American History ..... 3  
    A. The Women’s Suffrage Movement  
    Benefited Substantially From The  
    Anonymous Participation Of Women ..... 4  
    B. Anonymous Women Played An  
    Important Role In The Abolitionist  
    Movement ..... 7  
II. The Continued Popularity Of Anonymous  
Giving By And To Women Underscores The  
Importance Of Anonymous Giving To  
America’s Political And Cultural Future ..... 9  
CONCLUSION ..... 16

## TABLE OF AUTHORITIES

### Cases

<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995).....	15
<i>NAACP v. Alabama ex rel. Patterson</i> , 357 U.S. 449 (1958).....	3

### Rule

Supreme Court Rule 37.....	1
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### Other Authorities

<i>\$10 Million Gift Endows Scholarships, Sparks Matching Gifts</i> , Smith College (April 16, 2015), <i>available at</i> <a href="https://bit.ly/3qXqFPq">https://bit.ly/3qXqFPq</a> .....	13
<i>A Pair of Anonymous Donors Give \$50 Million to One of America’s Oldest All-Women’s Colleges</i> , Insider (Oct. 26, 2015), <i>available at</i> <a href="https://bit.ly/3kst5mL">https://bit.ly/3kst5mL</a> .....	13
<i>Amy Ostroth, \$5 Million Gift to Sweet Briar College Will Expand Its Presidential Scholars Program</i> , Sweet Briar College (Nov. 19, 2019), <i>available at</i> <a href="https://bit.ly/3aVkWUs">https://bit.ly/3aVkWUs</a> .....	14
<i>Anonymous Donor Creates Women’s Giving Initiative Challenge</i> , University of Health Sciences & Pharmacy in St. Louis (June 15, 2016), <i>available at</i> <a href="https://bit.ly/3kDLFbH">https://bit.ly/3kDLFbH</a> .....	14
<i>Anonymous Donor Gives \$100,000 to Support Women in Linux</i> , Ada Initiative (Dec. 11, 2014), <i>available at</i> <a href="https://bit.ly/3aYl71C">https://bit.ly/3aYl71C</a> .....	11

<i>Anonymous Donor Gives \$70M to Colleges,</i> CBS News (Apr. 23, 2009, 8:22 PM), <i>available at <a href="https://cbsn.ws/3ktzWwg">https://cbsn.ws/3ktzWwg</a></i> .....	14
Edith Paal, <i>Classes Give Students Control of Portfolios: Colleges Offer Dose of Real-Life Money Management</i> , The Dallas Morning News, March 2, 1997 .....	13
Elizabeth J. Dale et al., <i>Giving By and For Women: Understanding High-Net-Worth Donors' Support for Women and Girls</i> , Women's Philanthropy Institute (2018) .....	13
Erik Runge, <i>Anonymous \$14M Donation to Help Homeless Women in Chicago</i> , WGNTV.com (Apr. 10, 2018, 12:52 PM), <i>available at <a href="https://bit.ly/2ZTIUud">https://bit.ly/2ZTIUud</a></i> .....	11
<i>Funding Feminism: Monied Women, Philanthropy, and the Women's Movement, 1870-1967</i> (2017).....	4, 5, 6
<i>Inflation Calculator</i> , Official Data Foundation (2021), <i>available at <a href="https://bit.ly/3r0T86N">https://bit.ly/3r0T86N</a></i> .....	4, 5
<i>Inflation Calculator</i> , US Inflation Calculator (2021), <i>available at <a href="https://bit.ly/37OVQom">https://bit.ly/37OVQom</a></i> .....	4
Jennifer Wentz, <i>Women's Fund Connects Central PA Women With Life-Changing Causes</i> , Central Penn Bus. J., Oct. 20, 2017 .....	10
Julie Roy Jeffrey, <i>The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement</i> (1998) .....	8, 9
<i>Katharine Dexter McCormick: Pioneer for Women's Rights</i> (2003).....	5

Kathy Spillar, <i>Ms. is Turning 44! Celebrate with Us and Become a Ms. Partner</i> , Msmagazine.com (Sept. 6, 2016), available at <a href="https://bit.ly/3rbrZOR">https://bit.ly/3rbrZOR</a> .....	12
<i>Leading Philanthropies Announce Funding Collaborative to Build Women’s Power and Ensure Safe Workplaces</i> , Ford Foundation (March 14, 2019), available at <a href="https://bit.ly/2O1IqOQ">https://bit.ly/2O1IqOQ</a> .....	11
Linda Kamas et al., <i>Altruism in Individual and Joint-Giving Decisions: What’s Gender Got to Do With It?</i> , <i>Feminist Economics</i> , July 2008.....	9
Marilyn S. Blackwell, “ <i>Women Were Among Our Primeval Abolitionists</i> ”: <i>Women and Organized Antislavery in Vermont, 1834-1848</i> , <i>82 Vermont History</i> 13 (2014).....	7, 8, 9
Mary Duan, <i>A Wowser of a Year</i> , Monterey County Weekly, Jan. 9, 2014.....	10
<i>Mrs. Russell Sage: Women’s Activism and Philanthropy in Gilded Age and Progressive Era America</i> (2006).....	6
<i>Support Our COVID-19 Relief Efforts</i> , Women’s Foundation of Boston (2021), available at <a href="https://bit.ly/3dMAzj2">https://bit.ly/3dMAzj2</a> .....	12
Susan Goodier & Karen Pastorello, <i>Women Will Vote: Winning Suffrage in New York State</i> (2017) .....	5
<i>Wesleyan College to Receive an Anonymous \$6-Million Gift</i> , <i>The Chronicle of Higher Education</i> (Aug. 1, 1997), available at <a href="https://bit.ly/3qZSSVN">https://bit.ly/3qZSSVN</a> .....	14

*Where Is the Money for Women's Rights?  
Assessing the Resources and the Role of  
Donors in the Promotion of Women's Rights  
and the Support of Women's Rights  
Organizations*, The Association for  
Women's Rights in Development (February  
2006), available at <https://bit.ly/3bLUT1e>..... 10

*Women & Girls' Fund*, Main Street  
Community Foundation (2021),  
available at <https://bit.ly/2ZVmrMk> ..... 12

Women for Women International, *Match Her  
Courage: Women for Women International  
2018 Annual Report* (2019),  
available at <https://bit.ly/37RR3m5> ..... 12

## STATEMENT OF INTEREST<sup>1</sup>

Independent Women’s Law Center (“IWLC”) is a project of Independent Women’s Forum (“IWF”), a nonprofit, non-partisan 501(c)(3) organization founded by women to foster education and debate about legal, social, and economic issues. IWF promotes policies that advance women’s interests by expanding freedom, encouraging personal responsibility, and limiting the reach of government. IWLC supports this mission by advocating—in the courts, before administrative agencies, in Congress, and in the media—for equal opportunity, individual liberty, and respect for the American constitutional order.

As an organization founded by women to support women’s interests, *amicus* understands and appreciates the important role that anonymous giving played in the fight for women’s suffrage and in other historical civil rights movements, as well as the significant role it continues to play in supporting nonprofits that are dedicated to helping women and girls today. Moreover, as an organization supported by charitable donations, *amicus* has a substantial interest in preserving the freedom of donors to support causes and organizations that contribute to a robust civil society, the freedom to do so anonymously, and

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented in writing to the filing of this brief.



the freedom of charitable organizations to keep information about their donors private. *Amicus* is concerned that the California Attorney General's demand that confidential personal donor information be turned over to the state weakens the ability of individual donors and nonprofit organizations to carry out their goals and missions of assisting and advocating for women and girls. *Amicus*, therefore, respectfully urges this Court to protect the First Amendment right of all Americans who wish to keep their donations confidential, whatever the reason.

### **SUMMARY OF THE ARGUMENT**

Anonymous participation in political and charitable activity has a long and honorable tradition in this country. Female donors, in particular, have participated anonymously in important movements in our country's history, including advocacy for women's suffrage and the abolition of slavery. While those causes may seem uncontroversial to us today, they were deeply controversial in their time, making participation risky. The ability to remain anonymous was critical to these donors, as it has been to all donors who fear retaliation, wish to avoid unwanted publicity, or strive to give in ways that conform to the tenets of their faith. For those and other reasons, many donors, especially women, have long embraced the ability to contribute anonymously in support of important causes in our communities and across the world.

Under California's current disclosure regime, those who wish to anonymously donate to any charity registered in the state face a difficult choice: stop contributing to the charity or risk exposure. That

choice will undoubtedly have a chilling effect that runs counter to the rich history in this country of donors—many of them the independent women described below—participating silently in support of charity and progress.

In sum, the continued philanthropic participation of women, as well as the continued success of causes benefiting women, depend in no small part on this Court enforcing the principle that “privacy in group association may ... be indispensable to preservation of freedom of association.” *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958). For these and other reasons, IWLC urges this Court to enforce the requirement that states satisfy strict scrutiny before they may require the disclosure of the identities of donors to charitable organizations and to reverse the decision of the United States Court of Appeals for the Ninth Circuit.

## ARGUMENT

### **I. Anonymous Giving By Women Was A Critical Feature Of Pivotal Movements Throughout American History.**

History reveals that women in particular have chosen to donate anonymously to important causes and, relatedly, that charities and political movements involving women’s rights benefit substantially from anonymous donations. The women’s suffrage and anti-slavery movements are cases in point. These causes received substantial support from women who chose to participate anonymously. If required to disclose their identity, those women may not have participated to the same extent—or at all—to the

grave detriment of those movements and the progress of society at large.

**A. The Women’s Suffrage Movement Benefited Substantially From The Anonymous Participation Of Women.**

The women’s suffrage movement during the Gilded Age and the early years of the twentieth century was underwritten in large part by anonymous contributions, in particular by women. Pauline Agassiz Shaw, for example, made a number of anonymous donations to the National American Woman Suffrage Association (NAWSA), including a 1913 donation of \$30,000—nearly \$800,000 in today’s dollars. Joan Marie Johnson, *Funding Feminism: Monied Women, Philanthropy, and the Women’s Movement, 1870-1967* 55-56 (2017) (“*Funding Feminism*”); see *Inflation Calculator*, US Inflation Calculator (2021), available at <https://bit.ly/37OVQom> (“*Inflation Calculator I*”); *Inflation Calculator*, Official Data Foundation (2021), available at <https://bit.ly/3r0T86N> (“*Inflation Calculator II*”). That contribution was critical to the organization’s mission, providing more than 75 percent of its 1913 budget. See *Funding Feminism* at 56. Shaw made her gift without condition, so the leadership of NAWSA was free to use it to fund extensive efforts on behalf of women’s suffrage, including efforts to expand the reach of the movement to other parts of the country. Her contribution helped fund the organizers’ travel from the East Coast, where many of the suffragist organizations were based, to states including Arizona,

Kansas, Oregon, Wisconsin, Michigan, North Dakota, Montana, Ohio, and Nevada. *Id.* at 55-56.<sup>2</sup>

Shaw was not alone. Numerous other suffragists also chose to keep their contributions anonymous. In 1912, for example, philanthropist Katharine Dexter McCormick signed a check for \$6,000 to sustain *The Women's Journal*, a financially troubled magazine published by NAWSA. Armond Fields, *Katharine Dexter McCormick: Pioneer for Women's Rights* 107-08 (2003) (“*Katharine Dexter McCormick*”); see *Funding Feminism* at 62-63. McCormick’s gift was expressly made on the condition that her identity not be revealed to the public. *Katharine Dexter McCormick* at 108. Without that donation—which would amount to more than \$160,000 in today’s dollars—the publication may not have survived, as the donation single-handedly eclipsed the magazine’s budget deficit. See *id.* at 107-08; *Inflation Calculator II, supra*. Other underwriters of the movement remain anonymous to this day. For example, one unnamed woman donated \$35,000 to the suffrage campaign in New York in 1914. That donation was 77 percent of the campaign’s October 1914 fundraising drive, which raised a total of \$45,056. Susan Goodier & Karen Pastorello, *Women Will Vote: Winning Suffrage in New York State* 125, 173 (2017).

Even women who donated publicly to other causes chose to donate anonymously to the cause of women’s suffrage. Olivia Sage, a public supporter of

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<sup>2</sup> Shaw’s donations also funded the salaries of some of the organizers, allowing them to devote substantial time and efforts to the movement even in the absence of independent income. See *Funding Feminism* at 54-56.

universities, hospitals, and other organizations, insisted on anonymity when giving to the suffrage movement—gifting \$20,000 and other smaller contributions to the movement in the first two decades of the twentieth century. Ruth Crocker, *Mrs. Russell Sage: Women's Activism and Philanthropy in Gilded Age and Progressive Era America* 215 (2006); *Funding Feminism* at 31. And even women who donated publicly to the suffrage movement in some respects sometimes donated anonymously in others. For example, M. Carey Thomas, a well-known benefactor of the movement, anonymously donated to a fund covering the costs for suffragists to travel across the country in support of the cause. *Funding Feminism* at 61.

Each donor had her own reasons for remaining anonymous, and historical accounts indicate that the motivations were varied. Some may not have wished the extent of their wealth to become known. Some wanted to avoid the impression that they sought to control the use of the funds. Others probably feared public backlash or sought to minimize the impression that suffrage was a wealthy woman's cause. *See generally id.* at 51, 59-61. Whatever their reasons, there can be no doubt that the option to remain anonymous was an important factor in their ability and willingness to contribute. And the impact of those contributions is difficult to overstate. Anonymous donations to the movement were substantial and were often made at pivotal moments for the campaign, helping revive the movement from a financial slump in the early 1900s. *See id.* at 19-21, 31. Without them, the movement may have stalled as funding deficits slowed the spread of the suffragist message, further

delaying the availability of the right to vote for women.

**B. Anonymous Women Played An Important Role In The Abolitionist Movement.**

While the suffragist movement may be the clearest example of the importance of anonymous donations by female donors to controversial causes, it is far from the only one. Historical accounts reveal that women played an active role in the anti-slavery movement that preceded the Civil War, and they frequently did so anonymously. Although women often did not exercise control over money and therefore did not have the ability to contribute financial resources directly, the historical record contains ample evidence that women anonymously donated their time, talent, and organizing effort to support the cause of abolition. See Marilyn S. Blackwell, “*Women Were Among Our Primeval Abolitionists*”: *Women and Organized Antislavery in Vermont, 1834-1848*, 82 *Vermont History* 13, 39 (2014) (“*Primeval Abolitionists*”).

These women understood the realities surrounding their participation in the abolitionist movement. Their participation was controversial not only because of the subject of slavery, but also because of the fact that they were women, and their public activities in support of abolition met with cries of “feminine impropriety.” *Id.* at 22-23. Many of these women may not have been able or willing to participate had they been required to disclose their identities.

One of the most significant ways women contributed to the anti-slavery effort was through anonymous publications. In 1831, for example, an anonymous woman published an influential poem urging readers to “wake up” and “pity the oppressed” in the abolitionist newspaper the *Liberator*. Julie Roy Jeffrey, *The Great Silent Army of Abolitionism: Ordinary Women in the Antislavery Movement* 14 (1998) (“*Great Silent Army*”). Over the course of several years, two Vermont women anonymously published missives addressed to female readers, making the moral case for abolition while avoiding conspicuous “involvement in male affairs.” *Primeval Abolitionists* at 20, 22. And in 1861, a Massachusetts woman anonymously published “a powerful and influential argument for black equality.” *Great Silent Army* at 223.

As with the suffragist movement, there were a number of reasons why women chose to participate anonymously. One woman wrote to a friend that she did not publish under her own name because, although her principles were firm, her “nature” was “retiring.” *Id.* at 129-30. By publishing anonymously, women like her were able to bridge the gap between their sense of “propriety,” on the one hand, and their “duty” to act out their strongly held beliefs about equality, on the other. *Id.* Others were concerned that their participation as female anti-slavery advocates would distract from the substance of the message. The well-known anti-slavery writer Lydia Maria Child, for instance, compiled factual materials in support of her arguments for emancipation and submitted them anonymously to newspapers, “[e]ager to have mainstream papers publish her materials without the

slightest taint of fanaticism.” *Id.* at 213-14. Others sought to avoid the “public furor” that “had erupted over the appearance of anti-slavery women as speakers, organizers, and petitioners” by the late 1830s. *Primeval Abolitionists* at 22. Still others feared retaliation in personal and public life. “Women’s engagement in the movement ... provoked the debate over women’s role in politics.” *Id.* at 18. Thus, “[a]bolitionist women were even more subject to condemnation than their male colleagues.” *Id.* For those women, the option to participate anonymously was the only option; if they had been required to disclose their identities, they may never have spoken out in support of this important cause at all—to the detriment of the movement and of our nation.

## **II. The Continued Popularity Of Anonymous Giving By And To Women Underscores The Importance Of Anonymous Giving To America’s Political And Cultural Future.**

Well over a century later, many women continue to value the ability to donate anonymously. A 2008 study found that “[w]omen give significantly more than men as anonymous individuals.” Linda Kamas et al., *Altruism in Individual and Joint-Giving Decisions: What’s Gender Got to Do With It?*, *Feminist Economics*, July 2008, at 2; *see also id.* at 15, 23. Indeed, anonymous giving by and for women continues to fuel numerous causes and organizations, from the controversial to the prosaic, from the local to the national.

For example, in 2017, a local business journal reported on the activities of The Foundation for Enhancing Communities’ Women’s Fund in central



Pennsylvania, noting that an “anonymous donor created the fund in 2000,” and “[i]n the past 17 years, the Women’s Fund has provided more than \$117,000 in grants for 33 organizations that support a range of women-focused causes, from breast cancer awareness to literacy training for mothers.” Jennifer Wentz, *Women’s Fund Connects Central PA Women With Life-Changing Causes*, Central Penn Bus. J., Oct. 20, 2017. On the opposite coast, “The Women’s Fund [of the Community Foundation for Monterey County, California] benefited from a very generous (and anonymous) donor, who matched donations, dollar for dollar, up to the \$10,000 mark” in a fundraiser for “an endowment ... focusing on two interconnected goals: advancing women’s economic security and investing in the future of girls to help them grow into healthy, confident and fulfilled women.” Mary Duan, *A Wowser of a Year*, Monterey County Weekly, Jan. 9, 2014, at 19.

These examples are consistent with a growing trend towards anonymous giving to women’s causes. Research suggests that donors to groups that serve women and girls may favor anonymous giving in even greater numbers now than they did in the past. A 2006 report on developments in the funding of women’s organizations quoted a “representative of a women’s fund” who observed that the “number of anonymous gifts is growing” to women’s groups. Cindy Clark et al., *Where Is the Money for Women’s Rights? Assessing the Resources and the Role of Donors in the Promotion of Women’s Rights and the Support of Women’s Rights Organizations* 58, The Association for Women’s Rights in Development (February 2006), available at <https://bit.ly/3bLUT1e>.

And in 2019, the Ford Foundation reported the “launch of a landmark fund” to support efforts “to end sexual harassment and violence against women in the workplace and beyond.” *Leading Philanthropies Announce Funding Collaborative to Build Women’s Power and Ensure Safe Workplaces*, Ford Foundation (March 14, 2019), *available at* <https://bit.ly/2O1IqOQ>. The article noted that the fund’s underwriters included “*three* anonymous foundations.” *Id.* (emphasis added).

The many women’s organizations benefiting from anonymous donations address causes from career support to poverty relief to financial aid in response to the current COVID-19 crisis, and many of these gifts are made anonymously. For example, in 2014, the Ada Initiative, a group founded to combat workplace harassment of women working in technology and to provide other support to those women, announced that an anonymous donor had given \$100,000 with the goal of promoting a more diverse workforce in “open source software.” *Anonymous Donor Gives \$100,000 to Support Women in Linux*, Ada Initiative (Dec. 11, 2014), *available at* <https://bit.ly/3aYI71C>. In a completely different segment of the charity world, an anonymous donor gifted \$14 million to a local Chicago nonprofit to fund a “new facility ... that will include 38 apartments for formerly homeless women” and fifty new beds in interim housing. Erik Runge, *Anonymous \$14M Donation to Help Homeless Women in Chicago*, WGNTV.com (Apr. 10, 2018, 12:52 PM), *available at* <https://bit.ly/2ZT1Uud>.

The list goes on. In 2016, several anonymous donors promised \$15,000 toward the \$500,000 goal set

by the Women & Girls' Fund of the Main Street Community Foundation, a Connecticut charity. *Women & Girls' Fund*, Main Street Community Foundation (2021), *available at* <https://bit.ly/2ZVmrMk>. That fund is dedicated to fostering opportunities and education for “women and girls of all ages” in certain Connecticut communities. *Id.* Also in 2016, the feminist magazine *Ms.* announced a forty-fourth anniversary funding drive for which an “anonymous donor ha[d] pledged to match dollar for dollar the first 225 new *Ms.* Partners.” Kathy Spillar, *Ms. is Turning 44! Celebrate with Us and Become a Ms. Partner*, *Msmagazine.com* (Sept. 6, 2016), *available at* <https://bit.ly/3rbrZOR>. In 2019, Women for Women International’s annual report recognized the participation of “anonymous donors who provided generous support” for their mission of supporting and educating women in war-torn or poverty-stricken countries. Women for Women International, *Match Her Courage: Women for Women International 2018 Annual Report* 16 (2019), *available at* <https://bit.ly/37RR3m5>. And currently, the Women’s Foundation of Boston is soliciting donations to a “response fund” for “women- and girl-serving nonprofits in greater Boston that need help mitigating the challenges of COVID-19.” *Support Our COVID-19 Relief Efforts*, Women’s Foundation of Boston (2021), *available at* <https://bit.ly/3dMAzj2>. The Foundation noted that an anonymous donor had pledged to match donations up to \$500,000. *Id.*

Women themselves provide outsized support—often anonymously—to organizations that benefit other women, filling what might otherwise be a gap in

support for these causes. In a 2015 study, researchers found that “women were more likely than men to give to women’s causes and that, overall, 33 percent of women and nearly 25 percent of men reported making a gift to benefit women and girls.” Elizabeth J. Dale et al., *Giving By and For Women: Understanding High-Net-Worth Donors’ Support for Women and Girls* 6, Women’s Philanthropy Institute (2018). In particular, gifts from unknown female benefactors contribute to the continued success of women’s colleges. Several years ago, Smith College “received a \$10 million gift from an anonymous donor from the Class of 1986,” which would “be used to support endowed student scholarships and inspire matching gifts of \$250,000 or more from other scholarship donors.” *\$10 Million Gift Endows Scholarships, Sparks Matching Gifts*, Smith College (April 16, 2015), available at <https://bit.ly/3qXqFPq>. That same year, two alumnae of Wellesley College gave \$50 million anonymously to the institution. *A Pair of Anonymous Donors Give \$50 Million to One of America’s Oldest All-Women’s Colleges*, Insider (Oct. 26, 2015), available at <https://bit.ly/3kst5mL>.

Other women’s colleges have benefited from substantial anonymous donations. For example, in 1974, Bryn Mawr College used an anonymous gift of \$100,000 to establish a Student Investment Committee, “to encourage women to pursue careers in finance ... and to give women actual experience in the management of investment funds.” Edith Paal, *Classes Give Students Control of Portfolios: Colleges Offer Dose of Real-Life Money Management*, The Dallas Morning News, March 2, 1997, at 25A. In 1997, Wesleyan College in Macon, Georgia, received \$6

million from an anonymous donor. *Wesleyan College to Receive an Anonymous \$6-Million Gift*, The Chronicle of Higher Education (Aug. 1, 1997), available at <https://bit.ly/3qZSSVN>. And in 2019, Sweet Briar College received \$5 million from an anonymous donor to expand its academic scholarship program. Amy Ostroth, *\$5 Million Gift to Sweet Briar College Will Expand Its Presidential Scholars Program*, Sweet Briar College (Nov. 19, 2019), available at <https://bit.ly/3aVkWUs>. These donations have proved to be a critical component of the continued prosperity of these universities and to the development of their women-centered educational and extracurricular programming.

Women's colleges are not the only educational institutions to benefit from anonymous philanthropic gifts in support of women. In 2009, an anonymous donor sent checks totaling \$68.5 million to a dozen colleges and universities led by women. *Anonymous Donor Gives \$70M to Colleges*, CBS News (Apr. 23, 2009, 8:22 PM), available at <https://cbsn.ws/3ktzWwg>. And in 2016, an anonymous benefactor pledged to donate half the \$1,000 annual membership dues of each new member joining the Women's Giving Initiative, a group dedicated to providing resources to students at the St. Louis College of Pharmacy. *Anonymous Donor Creates Women's Giving Initiative Challenge*, University of Health Sciences & Pharmacy in St. Louis (June 15, 2016), available at <https://bit.ly/3kDLFbH>.

Like supporters of the suffrage and abolition movements over a century ago, present-day donors to charities and educational institutions benefiting

women and girls likely act anonymously from a variety of motives—whether because of sincerely held personal beliefs about the proper way to give, to avoid public attention, or out of mere personal preference. *See McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 341-42 (1995) (“The decision in favor of anonymity may be motivated by fear of economic or official retaliation, by concern about social ostracism, or merely by a desire to preserve as much of one’s privacy as possible.”). But whatever their motives, one thing is clear: the option to remain anonymous holds significant value for women of all political, religious, and social persuasions. And our nation has long reaped the benefit of their unostentatious generosity. That generosity is today threatened by California’s disclosure policy, which puts anonymous supporters of a wide range of charities at risk for unwelcome public notoriety. The policy represents a regressive and unconstitutional incursion on the historic freedom to give and participate anonymously and threatens the participation of many—in particular women—who have enriched American political progress for so many years.

**CONCLUSION**

For the foregoing reasons, as well as those discussed in Petitioners' briefs, the Court should reverse the decision below and remand with instructions to enter a permanent injunction against enforcement of the Attorney General's demand for Schedule Bs.

Respectfully submitted,

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