

Supreme Court Requests Further Briefing in Associational Privacy Cases

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Privacy in Focus®

Privacy in Focus has been following the U.S. Supreme Court's action on petitions for certiorari in three potentially important cases challenging California's compulsory donor disclosure rule. California's Attorney General requires all nonprofit organizations to disclose their donor lists as a condition of registering to solicit donations from California citizens. Three nonprofit organizations challenged the compulsory donor disclosure rule as a violation of the First Amendment right of associational privacy. The results were mixed in the federal district courts, but the U.S. Court of Appeals for the Ninth Circuit upheld the rule in all three cases. Each plaintiff nonprofit has petitioned for certiorari. *Privacy in Focus* previously has discussed the Ninth Circuit's rulings and has identified issues that could benefit from judicial clarity.

On February 21, the Court conferenced on two of the petitions, *Thomas More Law Center v. Xavier Becerra* (No. 19-255) and *Americans for Prosperity Foundation v. Xavier Becerra* (No. 19-251). In both cases the Court issued formal invitations to the U.S. Solicitor General, Noel Francisco, to file a brief expressing the view of the United States. In the third case, *Institute for Free Speech v. Xavier Becerra*, (No. 19-793) the Court previously requested the California Attorney General to file a brief in response. Thus, all three petitions remain open on the Court's docket. Briefing is likely to carry into late March, so action on the cert petitions is not anticipated until April. The Court's request for additional briefing has encouraged some observers who view the California cases as excellent opportunities for the Court to refine and clarify associational privacy jurisprudence outside the context of campaign finance.

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In a related development, on February 7, the Internal Revenue Service (IRS) held a public hearing on its proposed rulemaking to relieve 501(c)(4) and 501(c)(6) organizations from disclosing the names and addresses of donors on Schedule B of their annual tax information returns, or Form 990s. The IRS previously had relaxed donor disclosure for certain tax-exempt organizations, but a federal court in Montana ruled the IRS had not followed proper administrative procedures. The IRS is proposing to implement the policy through a formal rulemaking. The IRS's rulemaking would affect California and other states that require tax-exempt organizations to disclose their donors by filing their Schedule Bs with the states.

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