

Nos. 16-55727 & 16-55786

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

AMERICANS FOR PROSPERITY FOUNDATION,
Plaintiff-Appellee / Cross-Appellant,

v.

XAVIER BECERRA, Attorney General of the State of California,
in his official capacity,
Defendant-Appellant / Cross-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
Case No. 2:14-cv-09448-R-FFM (Hon. Manuel L. Real)

**BRIEF OF ALLIANCE DEFENDING FREEDOM AS *AMICUS
CURIAE* IN SUPPORT OF PLAINTIFF-APPELLEE/CROSS-
APPELLANT AND URGING REVERSAL ON THE ISSUE OF
FACIAL UNCONSTITUTIONALITY**

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RULE 26.1 DISCLOSURE STATEMENT

Amicus curiae, Alliance Defending Freedom is a non-profit organization incorporated in the Commonwealth of Virginia and is recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code. Alliance Defending Freedom has no parent corporation. Alliance Defending Freedom has no stock issued to the public, and accordingly, no publicly held corporation owns 10% or more of any stock of Alliance Defending Freedom.

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INTEREST OF *AMICUS CURIAE*¹

Alliance Defending Freedom is a non-profit legal organization devoted to defending and advocating for religious freedom. Alliance Defending Freedom provides strategic training, funding, and direct litigation services, and serves as counsel or *amicus curiae* in cases that raise issues of concern to the nation's religious community. Since its founding in 1994, Alliance Defending Freedom has played a role, either directly or indirectly, in dozens of cases before the United States Supreme Court, numerous cases before courts of appeals, and hundreds of cases before federal and state courts across the nation.

As a non-profit organization recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, Alliance Defending Freedom funds its activities, in large part, by raising charitable donations from individuals throughout the nation, including in California. Accordingly, Alliance Defending Freedom is subject to the California laws, mandates,

¹ Defendant-Appellant/Cross-Appellee and Plaintiff-Appellee/Cross-Appellant have consented to the filing of this brief. No party or party's counsel has authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting the brief. No person has contributed money that was intended to fund preparing or submitting the brief, except that Paul Hastings LLP paid the expenses involved in filing this brief.

and regulations at issue in this case, which require Alliance Defending Freedom to register and annually file its IRS Form 990 with the California Registry of Charitable Trusts (hereafter, “Registry”). *See* Cal. Code Regs. tit. 11, §301. The Registry is housed within the California Department of Justice, which is headed by the California Attorney General.

The California Attorney General has made a practice of sending letters to various registered charitable organizations, demanding that they submit a copy of the confidential Schedule B (titled “Schedule of Contributors”) attached to their IRS Form 990 as part of their annual registration filings. The confidential Schedule B lists the names, addresses, and donation amounts of major donors to the organization for the tax year. In recent years, the California Attorney General has specifically demanded in writing that Alliance Defending Freedom file its complete (*i.e.*, unredacted) Schedule B, which includes the identifying information of the major donors that Alliance Defending Freedom is required to disclose.² Startlingly, evidence adduced in this

² The California Attorney General’s letters to Alliance Defending Freedom demanding submission of Alliance Defending Freedom’s

case reflects that hundreds upon hundreds of Schedule B forms submitted to the California Attorney General by various charitable organizations were posted on a public website, exposing to the public the confidential donor information reported by those organizations.

Because Alliance Defending Freedom draws inspiration for its work from its Christian faith and is focused on protecting religious freedom, it receives donations from many individuals whose charitable giving is motivated by their religious convictions. Many of these individuals partake in charitable giving as a religious exercise, consistent with the religious principle of anonymous giving that is espoused in Christianity, as well as other major world religions.

The California Attorney General's practice ³ of requiring the involuntary disclosure of charitable giving information to the

complete Schedule B forms are accessible on the Registry's website through the search portal that is located at <http://rct.doj.ca.gov/Verification/Web/Search.aspx?facility=Y>.

³ *Amicus* acknowledges the dispute between the parties over whether California laws and regulations actually require organizations to file their Schedule B forms with the California Attorney General. *Compare* Pl.-Appellee's Br. 8–9 *with* Def.-Appellant's Br. 5–8. Whether mandated by California laws and regulations or by the discretionary act of the California Attorney General, the requirement of disclosing Schedule B forms constitutes governmental action that infringes and

government and its officials (and to, potentially, the public at large) has a chilling effect on the freedoms of individuals under the First Amendment to speak and associate anonymously, with resulting harm to their ability to engage in the religious exercise of making anonymous charitable donations pursuant to the dictates of their religious faith and conscience.

As an organization directly affected by the California Attorney General's Schedule B demands, Alliance Defending Freedom seeks to honor and protect the religious exercise of its donors by ensuring that their anonymity and privacy in charitable giving are not compromised. *Amicus* Alliance Defending Freedom thus has a substantial interest in the proper resolution of this case and in protecting the anonymity and privacy of its present and prospective donors.

Amicus respectfully requests that this Court grant the request of Plaintiff-Appellee/Cross-Appellant Americans for Prosperity Foundation to reverse the decision below insofar as it did not find the California Attorney General's practice of demanding Schedule B forms facially

harms the First Amendment rights of donors who wish to maintain their donations as confidential and anonymous.

unconstitutional, and remand the case to the district court with instructions to permanently enjoin the practice as facially unconstitutional.

INTRODUCTION AND SUMMARY OF ARGUMENT

Philanthropy is deeply ingrained in the American way of life. Indeed, Americans lead the world in charitable giving, and have collectively made individual contributions of over \$200 billion each year since 1998. LILLY FAMILY SCH. OF PHILANTHROPY, INDIANA UNIV., GIVING USA 2016: THE ANNUAL REPORT ON PHILANTHROPY FOR THE YEAR 2015 (2016). Embedded in the fabric of American generosity are values often animated by religion, both in terms of what motivates donors to give and which organizations receive their donations.

A significant factor motivating generosity among Americans is their commitment to their religious and spiritual beliefs. In a recent survey, 55% of Americans responded that their commitment to religion was an “extremely important” or “very important” motivation for their charitable giving. MELANIE A. MCKITRICK ET AL., CONNECTED TO GIVE: FAITH COMMUNITIES, KEY FINDINGS FROM THE NATIONAL STUDY OF AMERICAN RELIGIOUS GIVING 21–22 (2013). Religiosity and spirituality

are also linked to higher rates of charitable giving. A survey of American donors found the highest giving rates among the 60% of Americans who think of themselves as religious, and the next highest giving rate among the 18% of Americans who think of themselves as spiritual though not religious. *Id.* at 14. In Los Angeles County, home to a quarter of all Californians, religiously affiliated donors and frequent attenders of religious services were recently found to give charitably at higher rates than other Los Angeles area donors. UCLA LUSKIN SCHOOL OF PUBLIC AFFAIRS, THE GENEROSITY GAP: DONATING LESS IN POST-RECESSION LOS ANGELES COUNTY 12 (2016). Moreover, 73% of donations in America are given to organizations that are explicitly identified as religious: 41% to religious congregations, and 32% to religiously identified organizations, such as *Amicus Alliance Defending Freedom*. See MCKITRICK ET AL., *supra* at 9.

Given the significance of religious beliefs in the context of charitable giving, it is imperative to recognize that both Abrahamic and major Eastern religions—to which over 75% of Americans subscribe—universally teach and promote the principle that charitable donations be made in a confidential and anonymous manner. See PEW RESEARCH

CENTER, AMERICA'S CHANGING RELIGIOUS LANDSCAPE 4 (2015), <http://assets.pewresearch.org/wp-content/uploads/sites/11/2015/05/RLS-08-26-full-report.pdf> (providing religious demographic statistics). As this brief discusses in detail, Americans who adhere to Christianity (Catholics and Protestants), Judaism, Islam, Hinduism, Buddhism, or Sikhism, are all instructed to maintain the anonymity and confidentiality of their charitable giving.

But the California Attorney General's practice of mandating that charitable organizations disclose the names, addresses, and donation amounts of their major donors through the filing of their Schedule B forms (hereafter, "California mandate") places a chilling effect on donors who wish to exercise their First Amendment freedom to speak and associate anonymously, and harms their ability to engage in the religious exercise of anonymous charitable giving pursuant to the dictates of their religion.⁴ *See Perry v. Schwarzenegger*, 591 F.3d 1147,

⁴ There are many harms caused by California's mandate, including potentially exposing certain donors to threats, retaliation and reprisal by government officials or members of the public who disagree with the mission and values of the organizations supported by those donors. *See McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 341–42 (1995) (acknowledging that a decision to exercise First Amendment rights

1159–60 (9th Cir. 2010) (holding that disclosure requirements which have the practical effect of discouraging the exercise of constitutionally protected rights not only chill, but also infringe upon, the exercise of fundamental rights). The chilling effect on religious donors, in turn, harms charitable organizations, who receive less charitable contributions.

Accordingly, California’s mandate is facially unconstitutional⁵ because a substantial number of its applications result in the infringement of many religious donors’ First Amendment rights. *See Puente Arizona v. Arpaio*, 821 F.3d 1098, 1104 (9th Cir. 2016) (“In the First Amendment context, the Supreme Court recognizes a type of facial

anonymously “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”). In this brief, *Amicus* focuses on the harm to individuals’ ability to engage in the religious exercise of anonymous charitable giving pursuant to the dictates of major religions.

⁵ The Ninth Circuit’s prior decision in this case, 809 F.3d 536 (9th Cir. 2015), that it is bound by *Ctr. for Competitive Politics v. Harris*, 784 F.3d 1307 (9th Cir. 2015), to hold that California’s nonpublic Schedule B disclosure regime is not facially unconstitutional does not preclude a subsequent facial challenge, given the development of the record, and the reasons set forth in Americans for Prosperity Foundation’s brief. *See* Pl.-Appellee’s Br. 63–67; *see also* ER9 (findings of fact by the trial court showing the California Attorney General’s “pervasive, recurring pattern of uncontained Schedule B disclosures” to the public).

challenge in which a statute will be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010))). Moreover, the California mandate is contrary to the public policy of fostering the robust American tradition of charitable giving because it chills the exercise of the First Amendment rights of many religiously motivated donors who desire to donate anonymously. *See Doe v. Harris*, 772 F.3d 563, 683 (9th Cir. 2014).

For these reasons, this Court should grant the relief sought by Plaintiff-Appellee/Cross-Appellant Americans for Prosperity Foundation and remand the case to the district court with instructions to permanently enjoin the California mandate as facially unconstitutional.

ARGUMENT

I. California’s Mandate Chills Donors’ First Amendment Freedom to Speak and Associate Anonymously, and Harms the Religious Exercise of Anonymous Charitable Giving Pursuant to the Teachings of Major Religions

The First Amendment guards against government action that places a “deterrent and ‘chilling’ effect on the free exercise of constitutionally enshrined rights of free speech, expression, and association.” *Perry*, 591 F.3d at 1156 (quoting *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 557 (1963)). This Court has similarly recognized that disclosure requirements that have the practical effect of discouraging the exercise of constitutionally protected rights “have a chilling effect on, and therefore infringe, the exercise of fundamental rights.” *Perry*, 591 F.3d at 1159–60 (citing *NAACP v. Alabama*, 357 U.S. 449, 461 (1958)); *see also Dole v. Serv. Emp. Union, AFL-CIO, Local 280*, 950 F.2d 1456, 1460 (9th Cir. 1991); *accord Buckley v. Valeo*, 424 U.S. 1, 64 (1976) (“[W]e have repeatedly found that compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment.”). The right to speak and associate anonymously, which is implicit in the First Amendment, extends to the “significant number of persons who support causes anonymously.”

Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton, 536 U.S. 150, 166–67 (2002). That protection includes the right of donors to “pool money through contributions” in order to “join together ‘for the advancement of beliefs and ideas’” through charitable giving. *Buckley*, 424 U.S. at 65–66 (quoting *NAACP*, 357 U.S. at 460); *see also Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 611 (2003) (“The First Amendment protects the right to engage in charitable solicitation.”).

By mandating that organizations disclose the names, addresses, and donation amounts of their major donors,⁶ California infringes on the rights of donors who wish to keep their charitable giving and association with nonprofit organizations anonymous, rather than disclosed to government officials or the public at large. Disclosure to

⁶ That nonprofit organizations like *Amicus* submit their Schedule B forms to the Internal Revenue Service in compliance with federal law does not mean that *Amicus* and similarly situated organizations do not also object to the federal disclosure law or that the California mandate creates no additional harm. Here, *Amicus* focuses on the California mandate both because it is the subject of this case and because the California Attorney General has a history of disclosing Schedule B forms to the public at large. *See* ER9 (finding by the trial court of a “pervasive, recurring pattern of uncontained Schedule B disclosures”).

government officials, and even potential disclosure to the public, has a chilling effect on individuals' freedom to speak and associate anonymously, with a resulting harm to individuals' ability to engage in the religious exercise of making anonymous charitable donations pursuant to the dictates of their faith and conscience.⁷ See *McIntyre*, 514 U.S. at 341–42 (holding that the First Amendment protects anonymous speech even if the “decision in favor of anonymity” is motivated “merely by a desire to preserve as much of one’s privacy as possible”). The inability of religious donors to comply with religious teachings on anonymous giving, in turn, harms charitable organizations like *Amicus* who receive less donations than they would otherwise.

The amendments to California regulations effective July 8, 2016 (which will purportedly maintain the confidentiality of Schedule B forms) are not meaningfully different from the California Attorney

⁷ To the extent that California’s mandate infringes donors’ ability to freely associate and exercise their religion, this constitutes the type of case envisioned by the Supreme Court that implicates both the freedom of association and the free exercise of religion. See *Emp’t Div., Dep’t of Human Resources of Oregon v. Smith*, 494 U.S. 872, 882 (1990) (“[I]t is easy to envision a case in which a challenge on freedom of association grounds would likewise be reinforced by Free Exercise Clause concerns.”).

General's prior policies regarding confidentiality, which, as the trial court found, resulted in a "pervasive, recurring pattern of uncontained Schedule B disclosures." ER9; *see generally* Cal. Code Regs., tit. 11, § 310(b). Regardless of assurances by the California Attorney General that, going forward, Schedule B forms will truly be kept confidential from the public at large, there still remains the potential (and perhaps inevitability) of public disclosure of Schedule B forms, either due to inadvertent errors by government officials or hacking by outsiders, in addition to the problem of forced disclosure to government officials themselves. *See* ER9–10 (finding by trial court that California Attorney General engaged in "extensive disclosures of Schedule Bs, even after explicit promises to keep them confidential"). The chilling effects on the First Amendment rights of charitable donors remain unabated.

Accordingly, California's mandate is facially unconstitutional because a substantial number of its applications result in the infringement of many donors' First Amendment rights to speak and associate anonymously, and to comply with the teachings of their religion regarding charitable giving. *See Puente Arizona*, 821 F.3d at 1104 ("In the First Amendment context, the Supreme Court recognizes

a type of facial challenge in which a statute will be invalidated as overbroad if ‘a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.’” (quoting *United States v. Stevens*, 559 U.S. 460, 473 (2010))). California’s mandate is also contrary to the public policy of fostering the First Amendment exercise of associating with and contributing to charitable organizations. *See Doe v. Harris*, 772 F.3d at 683 (“[W]e ‘have consistently recognized the significant public interest in upholding First Amendment principles.’” (quoting *Sammartano v. First Judicial Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002))).

Understanding the nature and ubiquity of the various religious teachings that promote anonymous charitable giving will further assist the Court in recognizing the unconstitutional chilling effect caused by the California mandate. *Cf. Murdock v. Pennsylvania*, 319 U.S. 105, 108–09 (1943) (considering the distribution of missionary tracts as an “age-old” religious practice across “various religious sects” and holding that it has “the same claim as others to the guarantees of freedom of speech and freedom of the press”). As discussed in detail in the next section, both Abrahamic and major Eastern religions universally teach

and promote the principle that charitable donations are to be made in an anonymous and confidential manner.

II. Major Religions Universally Teach and Promote Anonymous Charitable Giving

A. Christianity (Catholic and Protestant) Teaches and Promotes Anonymous Charitable Giving

The Bible unequivocally instructs that the act of charitable giving should be confidential, rather than disclosed to the public. In the Christian faith, the New Testament records the specific teachings of Jesus Christ on the subject of charitable giving:

Take heed that you do not do your charitable deeds before men, to be seen by them. Otherwise, you have no reward from your Father in heaven. Therefore, when you do a charitable deed, do not sound a trumpet before you as the hypocrites do in the synagogues and in the streets, that they may have glory from men. Assuredly, I say to you, they have their reward. But when you do a charitable deed, do not let your left hand know what your right hand is doing, that your charitable deed may be in secret; and your Father who sees in secret will Himself reward you openly.

Matthew 6:1–4 (New King James Version); *see also Matthew 6:1, 4* (Aramaic Bible in Plain English) (“Pay attention in your charity giving, that you do it not in front of people . . . [s]o that your charity may be in secret . . .”).

The Greek word for “secret” in Matthew 6:4 is κρυπτός (krooptos), which means concealed, private, hidden, and inward. JAMES STRONG, STRONG’S EXHAUSTIVE CONCORDANCE OF THE BIBLE: UPDATED AND EXPANDED EDITION 1643, No. G2927 (Hendrickson Publishers 2011) (1890). The quoted passage has been interpreted to mean that, unlike the hypocrite who gives “to be seen by men,” the Christian ought to “conceal [charitable giving] as much as possible,” “keep it private,” and “[d]o it because it is a good work, not because it will get [him or her] a good name.” MATTHEW HENRY & THOMAS SCOTT, A COMMENTARY UPON THE HOLY BIBLE 33 (1835). Similarly, it has been taught that “encouragement from performing our acts of charity in secret is that it will be pleasing to God,” and therefore charitable giving “should be done as secretly as possible.” ALBERT BARNES, BARNES’ NOTES ON THE NEW TESTAMENT 28 (1962).

Anonymous charitable giving has been promoted by Catholic and Protestant figures throughout church history. In the fourth and fifth centuries, St. Augustine sought to separate charity from a concern with social relationships and refocus it toward the donor’s relationship with God. James Allen Smith, *Anonymous Giving*, in 1 PHILANTHROPY IN

AMERICA: A COMPREHENSIVE HISTORICAL ENCYCLOPEDIA 24 (Dwight F. Burlingame ed., 2004). In the thirteenth century, St. Francis preached that charitable giving was undermined when publicly disclosed by a donor because a true charitable virtue “had nothing to do with public recognition.” *Id.*

Martin Luther and John Calvin, the leaders of the Protestant Reformation, similarly discouraged charitable giving as a way to show off before others. Luther taught that “to give alms in secret means where the heart does not expose itself, or seek honor and name from it.” MARTIN LUTHER, COMMENTARY ON THE SERMON ON THE MOUNT 237 (Charles A. Hay trans., 1892). According to Calvin, Jesus “intended to teach nothing other than that we be unwilling to seek men’s admiration through our beneficence.” JOHN CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION: 1536 EDITION 344 (Ford Lewis trans., 1995).

As a result of such teachings, many Catholics and Protestants have, for centuries, tried to donate as anonymously as possible. John Wesley, the founder of the Methodist denomination, preached that charitable giving should be done “in as secret a manner as is possible; as secret as

is consistent with the doing it at all.” JOHN WESLEY, THE WORKS OF THE REVEREND JOHN WESLEY 234 (John Emory ed., 1831). As such, Catholics and Protestants have developed methods of aggregating and distributing resources through intermediaries in order to protect the privacy and anonymity of both the donor and the recipient. Smith, *supra* at 24; *see e.g.*, 11 CHRISTIAN THOUGHT 5–6 (Charles F. Deems et al. eds., 1893) (explaining that the “amount one gives should be a secret between his conscience and his God” and proposing an “envelope system,” whereby only one person besides the donor who placed his donation in the envelope knows about the donation); Mary J. Oates, *Faith and Good Works: Catholic Giving and Taking*, in CHARITY, PHILANTHROPY, AND CIVILITY IN AMERICAN HISTORY 296 (Lawrence J. Friedman & Mark D. McGarvie eds., 2003) (“The call of early twentieth-century bishops for all parishioners to contribute to charity through annual diocesan-wide collections accorded with the [Catholic] church’s traditional emphasis on the spiritual merits of anonymous giving.”).

In the modern world, it is difficult to maintain complete anonymity, because usually staff within a charitable organization will know the donor’s identity. However, many donors rely on a confidential

relationship with an intermediary in order to keep their donations as secret as possible. Smith, *supra* at 25. “Sometimes contemporary anonymity is merely a matter of keeping the donor’s name off public listings of supporters or withholding the donor’s identity” *Id.* California’s mandate which requires organizations to disclose the names, addresses, and donation amounts of their major donors contravenes the Catholic and Protestant teaching, as well as practice, of keeping donations as secret as possible.

B. Judaism Teaches and Promotes Anonymous Charitable Giving

Anonymous charitable giving is so highly regarded in Judaism that the Babylonian Talmud (which recorded Jewish oral law) states: “A man who gives charity in secret is greater than Moses our teacher.” BABYLONIAN TALMUD, *Baba Bathra* 9b. In the second century, the Mishnaic teacher Eleazar ben Shammua “emphasized the same theme that Jesus stressed: ‘Almsgiving should be done in secret and not before men, for he who gives before men is a sinner.’” JOHN D. GARR, *GENEROSITY: THE RIGHTEOUS PATH TO DIVINE BLESSING* 92 (2014) (quoting JERUSALEM TALMUD, *Baba Bathra* 9a). The virtue of

anonymous giving was also echoed by the revered thirteenth-century rabbi, Maimonides, who placed anonymous charitable giving on the second rung of his eight-step “ladder of charity,” identifying it as the second highest form of charity. GEORGE ROBINSON, *ESSENTIAL JUDAISM: A COMPLETE GUIDE TO BELIEFS, CUSTOMS & RITUALS* 240–41 (2016).

Accordingly, the Jewish faith has encouraged anonymous giving since ancient times. The Mishnah, part of the Jewish oral law recorded in the Talmud, describes the ancient Temple practice of secretly collecting and distributing *tzedakah*, the Hebrew term for “charitable giving.” OXFORD DICTIONARY OF ENGLISH 1923 (Angus Stevenson ed., 2010). The Temple had a “chamber of discreet,” where Jews would discreetly place gifts and donations for the poor. *Mishnah Shekalim* 5:6. Today, many Jewish leaders continue to encourage the practice of donating money and gifts in a confidential manner. See e.g., Mark Oppenheimer, *In Big-Dollar Philanthropy, (Your Name Here) v. Anonymity*, THE NEW YORK TIMES (May 10, 2013), <http://www.nytimes.com/2013/05/11/us/in-philanthropy-your-name-here-vs-anonymous-giving.html> (reporting that over his 28 years of service, Reform rabbi Lawrence Kushner’s congregation in

Massachusetts promoted anonymous giving by disallowing any honors for donors, including plaques or even a thank you at the end of the sermon); Joshua Kulp, *Shekalim, Chapter 5, Mishnah 6*, SHIURIM, <http://learn.conservativeyeshiva.org/shekalim-chapter-five-mishnah-six> (last visited Jan. 25, 2017) (encouraging Jews to “give charity secretly”).

C. Islam Teaches and Promotes Anonymous Charitable Giving

Islam also promotes the principle of concealing charitable giving. The Quran teaches Muslims the following: “If you give charity openly, that is good. But if you keep it *secret*, and give it to the needy in *private*, that is better for you. It will atone for some of your misdeeds. God is cognizant of what you do.” QURAN, *Surah al-Baqarah* 2:271 (emphasis added). Muhammad taught that one of the seven kinds of people who will receive shade from Allah on the Day of Judgment will be “a man who gives charitable gifts so secretly that his left hand does not know what his right hand has given.” 5 TAFSIR IBN KATHIR: SURAH HUD TO SURAT AL-ISRA’, VERSE 38, at 164 (Shaykh Safiur-Rahman al-Mubarakpuri ed., 2003). Muslim teachers have commented that anonymous charitable giving is necessary so that a person can “protect

himself from [the sin of] ar-Riyaa [which] means to do deeds in order to earn the praise and recognition of people.” *Sayings of the Prophet (SAW)*, 20 THE ISLAMIC BULLETIN 31, http://www.islamicbulletin.org/newsletters/issue_25/Ramadan_2010.pdf (last visited Jan. 22, 2017).

D. The Major Eastern Religions of Hinduism, Buddhism and Sikhism Teach and Promote Anonymous Charitable Giving

Hinduism distinguishes reciprocal charitable giving with charity given freely without expecting anything in return. See MICHAEL BARNETT & JANICE GROSS STEIN, SACRED AID: FAITH AND HUMANITARIANISM 143–44 (2012). A “pure” or “free” charitable gift in Hinduism is called *dān* and can be given in many forms, such as caring for those in need or making financial donations to charitable organizations and Hindu temples. See *id.* One of the most holy forms of *dān* is the *gupt dān* or anonymous *dān*. See *id.* at 144. Hindus are encouraged to give anonymous charitable gifts as an act of self-renunciation and generosity. See ERICA BORNSTEIN, DISQUIETING GIFTS: HUMANITARIANISM IN NEW DELHI 26–27 (2012).

For Buddhists, charitable giving is so essential that Buddha once explained: “The charitable man has found the path of salvation.” PAUL CARUS, *THE GOSPEL OF BUDDHA* 63–64 (1895). Moreover, Buddhists are encouraged to give charity in a confidential manner because doing so is the “‘secret virtue’ of Buddhism.” DAISSETZ TEITARO SUZUKI, *ESSAYS IN ZEN BUDDHISM* 345 (1961). Giving charity in a confidential manner signifies “practising goodness without any thought of recognition by others.” *Id.* at 343.

Sikhism similarly teaches that when “someone helps the needy it should be kept secret” because “whatever the Sikh has, (body, mind and wealth) are bounties of the Guru-God.” Shamsher Singh, *The Concept of Charity in Sikhism*, 51 *SIKH REV.* 3, 34 (2003). Anonymous charitable giving is consistent with Sikhism’s teaching that charity should be exercised without publicity in order to lower the ego of the donor. *See id.*

CONCLUSION

To protect the First Amendment rights of donors to speak and associate anonymously as well as their related ability to engage in the religious exercise of anonymous charitable giving pursuant to the dictates of their faith as taught by major religions, and to promote the public policy of fostering the exercise of Americans' robust tradition of charitable giving, *Amicus* respectfully requests that this Court remand the case to the district court with instructions to permanently enjoin the California mandate as facially unconstitutional.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing Brief *Amicus Curiae* with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on January 27, 2017.

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Dated: January 27, 2017

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