

Supreme Court Unanimously Limits State AG's Subpoena Power Over Donor Information

Paul L. Singer, Abigail Stempson, Beth Bolen Chun, Andrea deLorimier

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The U.S. Supreme Court recently issued an unanimous [decision](#) holding that a New Jersey Attorney General subpoena seeking nonprofit donor information inflicted a present injury on the organization's First Amendment associational rights, even though the subpoena had not yet been enforced. The *First Choice Women's Resource Centers, Inc. v. Davenport* decision confirms that there is heightened scrutiny when AG investigations target associational privacy and has significant implications for state AG investigations involving charities, advocacy organizations, and other groups engaged in protected speech.

The decision may also have effects outside of the nonprofit space, giving organizations an argument that they have injury in fact any time a state AG issues a subpoena requesting information that burdens a constitutional right.

Case Background

First Choice Women's Resource Centers, a nonprofit organization offering pregnancy counseling and resources, became the subject of a New Jersey Attorney General investigation into whether it misled donors or clients about its anti-abortion mission.

As part of that investigation, the Attorney General issued a broad subpoena requesting the identities and contact information of thousands of donors over multiple years, staff and employment information, and 28 categories of internal documents.

The subpoena warned that failure to comply could result in contempt or other penalties, which is typical of civil subpoenas (i.e., civil investigative demands) issued by state attorneys general. First Choice argued that donor anonymity was critical to its mission and that compelled disclosure would chill donor participation.

Rather than complying, First Choice filed suit in federal court under Section 1983, asserting that the subpoena violated its First Amendment associational rights. Lower courts dismissed the case, concluding that the organization lacked standing because, absent any state court order compelling production, Choice had not yet suffered any injury from the subpoena.

The Supreme Court reversed. Drawing on *NAACP v. Alabama* and *Americans for Prosperity Foundation v. Bonta*, the Court held that:

- **Compelled disclosure of donor information inherently burdens associational rights.**

The Court explained, “*An injury in fact arises when a defendant burdens a plaintiff’s constitutional rights*, and government demands for a charity’s private donor information have just that effect” (emphasis added). This occurs, the Court wrote, “not just when a demand is enforced but when it is made and for as long as it remains outstanding.”

- **The chilling effect occurs even if disclosure is limited to government officials and not the public.** The Court confirmed, “demands for private donor information burden First Amendment rights “even if there is no disclosure to the general public” (cleaned up).
- **A target of such a demand need not wait for enforcement to seek judicial relief.** The Court wrote, “Whether the subpoena’s demands and penalties were immediately enforceable or contingent on future court action, donors would reasonably fear disclosure and hesitate to associate, and a reasonable recipient of the Attorney General’s subpoena would be induced to trim its protected advocacy knowing it now stands in the government’s crosshair.”

The Court rejected New Jersey’s arguments that a potential a forthcoming protective order, the availability of state court review, or partial carve-outs for certain donors cured the constitutional harm.

Takeaways

The decision confirms that nonprofits and charities have standing to challenge state attorney general subpoenas seeking donor information before those subpoenas are enforced. It also suggests that organizations targeted by AG subpoenas seeking other types of information do not need to wait for enforcement proceedings to establish standing if the subpoena still “burdens a constitutional right.” This decision, then, may in effect undercut decisions like *Twitter v. Paxton* (9th Cir.), which held that Twitter’s First Amendment argument was not ripe because the Texas AG had not yet enforced its subpoena against Twitter and therefore the company had not yet suffered an injury in fact.

Additionally, the Supreme Court’s decision shows that even assurances that sensitive information will not be publicly disclosed do not eliminate constitutional concerns. The Court made clear that compelled disclosure to the government alone can chill protected activity.