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Second Circuit Upholds New York’s Donor Disclosure Requirement

In *Citizens United et al. v. Eric T. Schneiderman*, No. 16-3310 (https://ag.ny.gov/sites/default/files/citizens_united_-_ca2_decision.pdf), the Second Circuit held that New York state’s requirement that registered charities disclose their donors does not run afoul of the First Amendment. Under New York law, a copy of an organization’s Form 990 (including Schedule B, which consists of a list of the organization’s donors, the donors’ addresses, and the amounts of their donations) must be filed with the state’s attorney general and such disclosures are to be public unless they are “exempt from disclosure pursuant to State or Federal law.” Under the Internal Revenue Code, the IRS must keep the information on Schedule B confidential. Appellants refused to submit more than the first page of their Schedules B. The court found that the mere requirement on a tax-exempt organization to disclose its donor list to a state’s authority charged with regulating nonprofits does not impermissibly chill speech or assembly rights nor does it operate as a prior restraint on non-profits’ solicitations of donations. The court also held 1) federal tax laws do not preempt the New York law, 2) due process claims concerning its implementation were not ripe, and 3) the Attorney General’s regulations that include 501(c)(4) organizations in the definition of “charitable organization” were not ultra vires. Accordingly, it dismissed the appellants’ amended complaint.



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