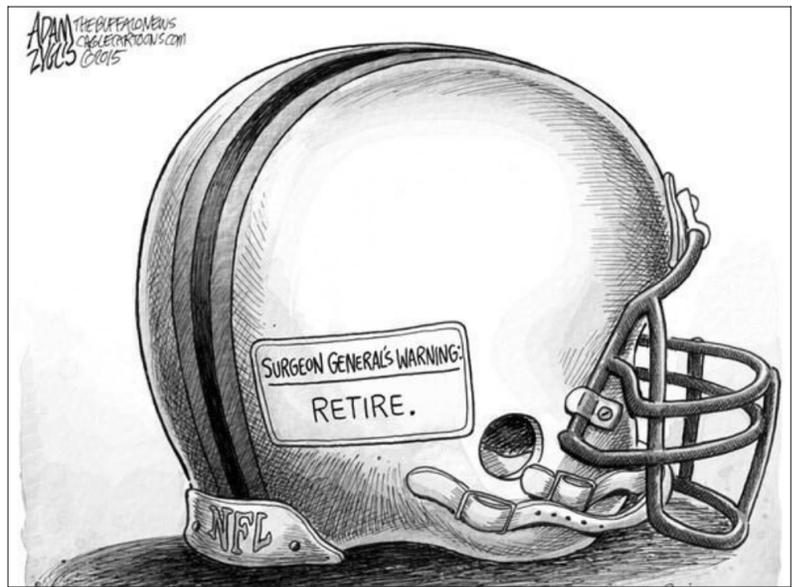


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## Defending free speech from the whims of state

By **TIM PHILLIPS** and **DAVID SPADY**  
CONTRIBUTING WRITERS

The First Amendment just had its day in court – and it won, at least temporarily.

Recently, a Los Angeles-based federal judge, Manuel Real, issued a ruling temporarily protecting our organization, the Americans for Prosperity Foundation, from demands made by California Attorney General Kamala Harris. The judge's order is an important victory for everyone who believes that one of America's most basic freedoms – the freedom of speech enshrined in the Bill of Rights – should not be subject to the whims of politicians.

Our lawsuit concerning Attorney General Harris revolves around a simple issue: Whether she can force our organization to turn over a list of our supporters.

The story began in March 2013. Harris demanded that our foundation provide her with the names, addresses and other personal information for anyone who has donated to our foundation. We were shocked by this request.

The Americans for Prosperity Foundation is a nonprofit educational organization. We promote a free-market message. We focus on economic issues both at the national and state levels, including in California. In 10 years of working in the state – during which time we complied with the state's regulations governing nonprofits like ours – the attorney general's office had never asked us to reveal the information which Harris was now requesting.

We wrote back, explaining that the request was highly irregular and would violate our supporters' First Amendment rights. The attorney general's office then doubled down on its demand, this time asking for the information for multiple prior years. Harris warned that if we did not obey, she would revoke our nonprofit status and hold our staff personally liable for fines.

These actions would effectively end our presence in the state of California, so we took the state to court.

The Supreme Court has long recognized and respected the First Amendment's protection of privacy for reasons of free speech. The court established the precedent in the 1950s, re-affirming it in the 1980s in a case dealing with the Socialist Workers of America – an organization with a very different viewpoint than ours, to say the least. In both cases, the Supreme Court ruled that the First Amendment grants the right to privacy to the members of private asso-

ciations, particularly if they face potential harm for their views. The court's reasoning was that such threats can stifle public debate and suppress free speech.

Judge Thurgood Marshall was very clear about what was at stake, stating in the Socialist Workers case that the government's interest in knowing an organization's membership does "not justify the greater threat to First Amendment values."

The court's precedent easily applies to our foundation. Our free-market views are deeply unpopular with politicians – both in Sacramento and Washington – who want to expand the size and scope of government. We have been publicly denounced by President Obama and by Senate Majority Leader Harry Reid on the floor of the U.S. Congress. The threats we receive on a daily basis are too chilling to repeat in print. Given this reality, disclosing our supporters' and members' personal information would subject them to hostility and effectively suppress their freedom of speech – or worse.

The attorney general's office sought to allay our fears by promising that any information we provide would be protected by its privacy policy. But we can't accept this assurance.

As Judge Real noted, there is no guarantee that such promises would be enforced. California law does not ensure the confidentiality of state records. Indeed, state law appears to require her to disclose information in her possession upon request from the public. Real also pointed out, quite rightly, that the attorney general's privacy policy is not legally binding and can be changed at any time. Harris' promises, therefore, are meaningless.

Judge Real wrote in his initial ruling, the state of California "has not suffered from a decade of not getting this information, whereas harm to the foundation would be irreparable." He also noted that the Harris' demands "would have a chilling effect on free speech."

His ruling has ramifications far beyond California. Every American, regardless of their political views, deserves to be protected from government targeting. Freedom of speech is among our country's most inviolable rights. We hope the federal courts will make permanent the judge's initial ruling – and thereby protect every American's sacred freedom.

Tim Phillips is the president of Americans for Prosperity Foundation. David Spady is the California state director of Americans for Prosperity Foundation.

## MIDDLE EAST CHAOS NOT NETANYAHU'S FAULT

No two-state deal until Palestinians accept Israel's existence.

**WASHINGTON** • Of all the idiocies uttered in reaction to Benjamin Netanyahu's stunning election victory, none is more ubiquitous than the idea that peace prospects are now dead because Netanyahu has declared that there will be no Palestinian state while he is Israel's prime minister.

I have news for the lowing herds: There would be no peace and no Palestinian state if Isaac Herzog were prime minister, either. Or Ehud Barak or Ehud Olmert for that matter. The latter two were (non-Likud) prime ministers who offered the Palestinians their own state – with its capital in

Jerusalem and every Israeli settlement in the new Palestine uprooted – only to be rudely rejected.

This is not ancient history. This is 2000, 2001 and 2008 – three astonishingly concessionary peace offers within the past 15 years. Every one rejected.

The fundamental reality remains: This generation of Palestinian leadership – from Yasser Arafat to Mahmoud Abbas – has never, and will never, sign its name to a final peace settlement dividing the land with a Jewish state. And without that, no Israeli government of any kind will agree to a Palestinian state.

Today, however, there is a second reason a peace agreement is impossible: the supreme instability of the entire Middle East. For half a century, it was run by dictators no one liked but with whom you could do business. For example, the 1974 Israel-Syria disengagement agreement yielded more than four decades of near-total quiet on the border because the Assad dictatorships so decreed.

That authoritarian order is gone. Syria is wracked by a multisided civil war that has killed 200,000 people and that has al-Qaida allies, Hezbollah fighters, government troops and even the occasional Iranian general prowling the Israeli border. Who inherits? No one knows.

In the past four years, Egypt has had two revolutions and three radically different regimes. Yemen went from pro-American to Iranian client so quickly the U.S. had to evacuate its Embassy in a panic. Libya has gone from Moammar Gadhafi's crazy authoritarianism to jihadi-dominated civil war. On Wednesday, Tunisia, the one relative success of the Arab Spring, suffered a major terror attack that the prime minister said

"targets the stability of the country."

From Mali to Iraq, everything is in flux. Amid this mayhem, by what magic would the West Bank, riven by a bitter Fatah-Hamas rivalry, be an island of stability? What would give any Israeli-Palestinian peace agreement even a modicum of durability?

There was a time when Arafat commanded the Palestinian movement the way Gadhafi commanded Libya. Abbas commands no one. Why do you think he is in the 11th year of a four-year term, having refused to hold elections for the past five years? Because he's afraid he would lose to Hamas.

With or without elections, the West Bank could fall to Hamas overnight. At which point fire rains down on Tel Aviv, Ben Gurion Airport and the entire Israeli urban heartland – just as it rains down on southern Israel from Gaza when it suits Hamas.

Any Arab-Israeli peace settlement would require Israel to make dangerous and inherently irreversible territorial concessions on the West Bank in return for promises and guarantees. Under current conditions, these would be written on sand.

Israel is ringed by jihadi terrorists in Sinai, Hamas in Gaza, Hezbollah in Lebanon, Islamic State and Iranian proxies in Syria, and a friendly but highly fragile Jordan. Israelis have no idea who ends up running any of these places.

Well, say the critics. Israel could be given outside guarantees. Guarantees? Like the 1994 Budapest Memorandum in which the U.S., Britain and Russia guaranteed Ukraine's

"territorial integrity"? Like the red line in Syria? Like the unanimous U.N. resolutions declaring illegal any Iranian enrichment of uranium – now effectively rendered null?

Peace awaits three things. Eventual Palestinian acceptance of a Jewish state. A Palestinian leader willing to sign a deal based on that premise. A modicum of regional stability that allows Israel to risk the potentially fatal withdrawals such a deal would entail.

I believe such a day will come. But there is zero chance it comes now or even soon. That's essentially what Netanyahu said Thursday in explaining – and softening – his no-Palestinian-state statement.

In the interim, I understand the crushing disappointment of the Obama administration and its media poodles at the spectacular success of the foreign leader they loathe more than any other on the planet. The consequent seething and sputtering are understandable, if unseemly. Blaming Netanyahu for banishing peace, however, is mindless.

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## California businesses victimized by Ex-Im Bank

By **DANIEL IKENSON**  
CONTRIBUTING WRITER

If you count yourself among the majority of Americans fed up with the unsavory, business-as-usual, backroom dealing that continues to define Washington, take heart in the fact that the charter of the scandal-prone U.S. Export-Import Bank is set to expire June 30. If you are among the misinformed or privileged few who support the Bank's reauthorization, how do you justify the collateral damage Ex-Im inflicts on companies in California and across the country?

Ex-Im is a government-run export credit agency, which

provides below-market-rate financing and loan guarantees to facilitate sales between U.S. companies and foreign customers. In 2013, roughly 75 percent of Ex-Im's subsidies were granted for the benefit of just 10 large companies – including Boeing, Bechtel and General Electric – that could easily have financed those transactions without taxpayer assistance.

Supporters characterize the bank as a pillar of the economy, undergirding U.S. export sales, which allegedly create more higher-paying U.S. jobs. But, like all Washington subsidy programs, Ex-Im gives to the few, but takes from the many.

Ex-Im's management and its

Washington-savvy supporters have been running a shell game, dazzling Congress with the shiny new export sales it finances, while drawing policymakers' attention away from the costs those activities impose on everyone else.

Last year, Delta Airlines finally had enough and complained about Ex-Im loans to Air India, which were used to buy aircraft from Boeing. Delta officials demonstrated how those taxpayer subsidies, made for the benefit of Boeing's bottom line, put Delta at a competitive disadvantage by reducing Air India's capital costs. Why should taxpayer dollars be used to promote the interests of one U.S. company

over another?

The problem isn't limited to Delta. A recent Cato Institute study estimated the net costs imposed on firms in downstream industries, on account of Ex-Im's subsidies to firms in supplier industries, to be \$2.8 billion per year, and that firms in 80 percent (189 of 237) of U.S. manufacturing industries incur costs that exceed the total value of Ex-Im subsidies they may receive.

California is home to thousands of companies in the industries victimized in precisely the same manner as Delta. Computer-storage device manufacturers Seagate Technology and Western Digital Corp., which together employ 120,000 workers

in Cupertino and Irvine, and Fleetwood Motor Homes, an employer of 1,000 workers in Riverside producing motor homes, are just a few examples.

The Export-Import Bank temporarily benefits some companies in a conspicuous manner. But it does so by quietly burdening often unwitting U.S. companies in downstream industries. It's time for California's business victims to speak up.

Daniel Ikenson is director of the Cato Institute's Herbert A. Stiefel Center for Trade Policy Studies and author of the study: "The Export-Import Bank and Its Victims: Which Industries and States Bear the Brunt?"