

ORAL ARGUMENT — 02/03/98
97-0812
IN RE BAY AREA CITIZENS AGAINST LAWSUIT ABUSE

LAWYER: As the court knows, we're here on a petition for writ of mandamus. But it involves two very important questions, two questions that I believe are of great interest to the citizens of the state. Of course, the easy question is the first amendment. The second question that is equally important to my client's interests in this case is whether or not there is jurisdiction in this case over the Bay Area Citizens Against Lawsuit Abuse "BACALA"?

The reason that is important, particularly the jurisdictional issue, is my clients face a trial on Feb. 23 of this year over issues that we do not believe the TC or the real parties in interest, the plaintiffs, have the right to bring.

PHILLIPS: Why should we address that issue by mandamus?

LAWYER: The court wrote *Walker v. Packard* that mandamus is an extraordinary remedy. I believe under the circumstances, that a trial court has no discretion when it makes determinations on issues of law. And the reason that that issue is important is, there are citizens of Nueces county, as well as the trial judge that will undergo a trial in this case, when there is no standing for the plaintiffs to bring this issue to begin with.

SPECTOR: How about the city charter, doesn't that confirm standing?

LAWYER: The City charter was determined in 1935 in the *City of Corpus Christi ex relator Harris v. the Flato(?)* case, to only give right of the taxpayers to bring suits to enjoin the payment of money in the future if the city itself does not do that. And I think that it's important in this case to understand that the City of Corpus Christi is not complaining about what it is that - BACALA has done or not done in this lawsuit. And not once have the plaintiffs, the real parties in interest, gone to the city and even applied and asked the city to bring this lawsuit.

SPECTOR: You're saying they wouldn't because they are not dissatisfied with this _____?

LAWYER: That would be my viewpoint. And I think that the City charter in the cases that then construe the citizen's rights throughout the state say that there is no right to do so in the past. And I think it's important to point out that the evidence before this court in the record will be 1) that BACALA does not occupy any of those premises as of April, 1997.

SPECTOR: But that was after the suit was filed?

LAWYER: Yes it was.

SPECTOR: Do you see a difference in this case on a jurisdictional issue say from the *Walker v. Packard* scenario? Do you see a difference in the cases where a party's constitutional rights are at stake, and if you have to go through the trial process and the appellate process, then you won't be able to put those constitutional rights back in the bag?

LAWYER: I would agree with you, because of course, if our donors are discovered, then the cat is out of the bag.

PHILLIPS: You say first the TC has no discretion to commit a legal error, which of course would mean, we would have roughly 3-4 million mandamuses a year. And then you say somebody would sue that had no right to sue and it would be a useless act. But we've held in *Canadian Helicopters* that that alone doesn't give you right to seek a mandamus. What can you define from our cases that would let you challenge the mere facts submitted at this point prior to development of a trial record?

LAWYER: I was told to anticipate that question from yourself, that perhaps there would be a concern about a flood of litigation. I believe that in the *CSR* opinion, that was written by Justice Spector, and I believe in that particular opinion Justice Baker called upon the legislature in a special appearance context to change the law and allow an interlocutory appeal. And that was in fact done by the legislature. And I think what I can call upon before the court is some extraordinary circumstances such that the court could tailor such narrow relief in this case, that it would not invite the flood of litigation that perhaps you're concerned about. I'm not a practitioner before this court on a regular basis, certainly, but I would be willing to gamble and say that there are not very many of these types of cases, if any, in the entire state of Texas.

HANKINSON: How would you craft this relief?

LAWYER: Number 1, depending upon how the court wishes to go, I believe that this court can establish or decide that under these circumstances, the taxpayers have no right to seek what it is that they are trying to do.

OWEN: You're going to make a taxpayer standing exception then, is that how you would characterize it?

LAWYER: I believe that that exception, if such an exception already exists, because the taxpayers have no right to...

OWEN: No, I'm talking about in terms of bringing the issue before the court on mandamus. How would you characterize? You say we could be able to carve a narrow remedy here where we wouldn't open the floodgates on legal questions being presented by mandamus.

LAWYER: Of course, certainly, it exists in the jurisdictional context to begin with. And I'm willing to be that not very many of these types of mandamus appeals involve a jurisdictional issue. There is no other way for my client to present this issue to the court.

OWEN: Why won't an appeal suffice? Assuming we were to grant relief and deny the access to your donors, and there was no issue of membership being disclosed or amounts of donations, why wouldn't an appeal of the so-called jurisdictional issues be enough, be adequate?

LAWYER: The fundamental issue before the court is if the taxpayers, the plaintiffs, do not have the right to do this initially, an appeal will put other taxpayers to the expense of the trial. It should be pointed out to the court as is in the record in this circumstance, that a visiting judge has been appointed to hear this case, Judge Robert Garza, from the Rio Grand Valley. And so I believe that we will be back before the court again stating that taxpayers do not have jurisdiction to write a standing to bring this lawsuit. And I believe that the court can take judicial notice or see the very harm that is being put upon my client by BACALA by having to go through this lawsuit.

And perhaps if I could go back and answer Justice Hankinson's question, and it will satisfy you Justice Owen. This lawsuit is the epitome of harassment. Because if the plaintiffs wanted to fashion relief and if the court wanted to fashion relief they would go to the City of Corpus Christi, which is the source of the money purportedly the public funds, or they would go to the Alliance. And what they have done in this case is get the alliance documents, their financial records, which do not show any payment of tax monies to anyone. And they've asked for our records which we've given them. And that has not been satisfactory to the plaintiffs in this particular case. And so I do believe that it is one of extraordinary circumstances because the jurisdictional question does not involve BACALA. We are not a proper party to this lawsuit just like the plaintiffs have no right to bring it. And so I do believe it is an extraordinary circumstance. And I know what the cases say about that, that it is an unusual circumstance. But the *CSR* case, that was written about an asbestos manufacturer from Australia. Certainly could not anticipate that it was going to be hauled into court some 30-40 years later. Just like my clients have no interest or concern at all about what goes in the Alliance _____, we didn't then before the lawsuit was filed, we don't now. If the deed reversed the decision of Corpus Christi, my clients do not care about that.

PHILLIPS: What kind of showing do you say the law requires you to make in order to keep from having divulge your supporters and contributors?

LAWYER: Well I believe that the *Ex Parte Lowe* case decided by the SC in 1994, that involved a group that I would suggest is a slightly more unpopular than BACALA said that: "All my clients were required to do was to invoke their 1st amendment right," which we did in this case, and then the burden of proof would shift to those seeking that information, the plaintiffs in this case. And we believe that we have done that. But if the court were to disagree and say: "Well BACALA, the burden is upon yourself to bring forth this information," we've also done that. We had an evidentiary hearing.

SPECTOR: Does the corporation have a first amendment right?

LAWYER: This was not briefed, and I apologize for that. But I would cite to the court the *First National Bank of Boston v Bellotti* from the US SC in 1978, which said: “Yes, corporations do have that same right.”

SPECTOR: Under what circumstances?

LAWYER: Under the circumstances that the 1st amendment as applied to the states through the 14th amendment. It is that very circumstance, and again I apologize for not having that in the brief, but when counsel...

SPECTOR: Maybe you can furnish that to us.

LAWYER: The cite of that is 98 SC 1407. That was decided in April, 1978. And I would suggest that the reasoning is sound in that case, and the reason it is sound, I believe that if the court starts making distinctions within the 1st amendment, for example, a popular versus unpopular group, or a corporation versus an individual, that would not be what the first amendment or the Texas Constitution, which gives broader rights in some circumstances in the first amendment itself. That would not be a good distinction to make in my view.

SPECTOR: The organization that you’re representing does it come under in anyway the election code disclosure requirements, as a PAC would be or something like that?

LAWYER: Yes. I understand what the court is asking. The plaintiffs attempted to inquire early on whether or not we were political lobbyist; therefore, we would come under the elections code. We are not. We are a nonprofit corporation existing under the IRS Code 501(c)(6). We do not have those same types of requirements, because we don’t engage in those same activities.

SPECTOR: You’re not a political committee under the terms of the election code?

LAWYER: No.

PHILLIPS: You say that we shouldn’t start making distinctions between people on their first amendment right _____ popular or unpopular, but the federal courts speak repeatedly of a serious infringement of association’s rights. If a group that is universally popular so that people are clamoring to join it seems to me there would be no infringements. Don’t we have to look at that, or is that word “serious” just something they threw in to make the test sound better?

LAWYER: Well I can’t speak for what was in their minds at the time, but I certainly do not believe that it is a wise reason decision to begin making those types of distinctions. The court itself may have differing views about the roles of Citizens Against Lawsuit Abuse Associations

within the state. There are a number. Depending upon what part of the state you're in, they may be popular or they may be unpopular. In Corpus Christi all the court had to do in 1994 and 1995 was drive up and down the highway and see the billboards that were in opposition to it. Or, the TV commercials that were equating the organization with a very far right organization.

PHILLIPS: Does every non-profit corporation have an absolute first amendment right trumping the statute or anything else, have an absolute first amendment right to keep its membership secret from those who it desires to keep it secret?

LAWYER: I, would say yes, based on the *NAACP v. Alabama* case. Based on *Ex parte Lowe* by this court. The reason that that is so important in this case is because the disclosure of the membership list has absolutely nothing to do with what it is that the plaintiff's seek. They seek to enjoin the payment of tax monies, that means where the money goes from the city.

PHILLIPS: Are you asking us to set aside the first amendment and just rule that this is irrelevant and issue a mandamus on those grounds?

LAWYER: If I understand the question the court is asking me "whether or not I would like the court to rule upon the jurisdictional issue?"

PHILLIPS: No. New question. You said this is so important here because it's irrelevant to our case. And I'm asking are you asking us to look at the mandamus just on that grounds, the relevancy verses irrelevancy?

LAWYER: No.

PHILLIPS: So if there wasn't a first amendment pinged to this, you wouldn't be here?

LAWYER: No, I don't agree with that either, because I believe that the court needs to look beyond just the circumstances of whether or not the first amendment is involved. There is serious harm being caused to my client, an organization throughout the state that may be perceived as unpopular, an organization that set about to change the citizenry view of the judicial system and the legal process.

GONZALEZ: The other side would characterize it as an organization designed solely for jury tampering.

LAWYER: Justice Gonzalez, of course, they've made that argument, which is why the harm is so evident by what has happening to BACALA.

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RESPONDENT

HALLMAN: I represent six Corpus Christi taxpayers, who are real parties in interest in this case. BACALA may perceive they've suffered some serious harm. But if that is so, it is a self-inflicted wound. BACALA voluntarily chose to operate as a nonprofit corporation under the Act, which subjects it to a public disclosure requirement, that it is required to publically all financial records.

ABBOTT: Let's talk about that. In your briefing there's heavy emphasis on the word "all", but I don't recall emphasis on the words "financial records." Where is there a definition of "financial records?"

HALLMAN: There is a definition in the earlier part of the statute in §a it says: "The corporation shall maintain current, true, accurate financial records with full and correct entries made with the respect to all financial transactions of the corporation."

ABBOTT: And why would contributors or contributions be characterized as a financial transaction?

HALLMAN: Let me correct something that the ACLU has presented in its amicus brief. First it says that the legislative history suggests that it was only concerned with the spending of funds and, therefore, we shouldn't be concerned with how the funds were received. Although, there's nothing in the legislative history to say that that wasn't also a concern. They focused on that. In that statute also, §a, it says: "With respect to all financial transactions of the corporation, including all income and expenditures." So they were concerned not just with the spending practices of nonprofit organizations...

BAKER: So it's your argument that under that statute, because it says they are concerned with income, that you also have to reveal who gave you that income?

HALLMAN: Exactly. You have to reveal all your financial records. There's no other way to read that statute.

HECHT: And that would be true for every nonprofit corporation in the state?

HALLMAN: Every nonprofit corporation that qualifies under the statute. The statute was narrowly written to only address those nonprofit corporations where there had been perceived problems. Other organizations, other nonprofit corporations say those that had members and solicited from their membership, those that had contributions from the public of less than \$10,000. Schools, hospitals, alumni associations, and so forth, they exempted out of that public disclosure requirement.

ABBOTT: I think probably from an accounting point of view contribution would not be characterized as income.

HALLMAN: I'm not an accountant. I just read the language of the statute and it clearly says that "All financial records including all income and expenditures." And if I'm looking at income, I'm looking at how the money was received. And that's part of the financial records in my view.

OWEN: Does the NAACP have to disclose their membership list, the Texas chapter?

HALLMAN: I don't know if they qualify under the statute.

OWEN: If they did, would they have to disclose their membership and donors?

HALLMAN: I think it depends on what kind of showing they made. I think if they made the same kind of showing that was made in *NAACP v. Alabama*, I think there could be an argument made that the first amendment would prevent them from doing that.

OWEN: What showing do you say?

HALLMAN: Well our argument is that if you choose among different business entities, in our case they chose to be this nonprofit organization that was subject to the public disclosure requirement, that was a voluntary choice they made, and they made that choice so that they would be exempt from certain taxes. They could have chosen to be a corporation.

OWEN: Back to my question. What kind of showing would the NAACP have to make to circumvent this statute?

HALLMAN: The showing would have to be objective and articulable facts showing a well-rounded fear of economic reprisal, loss of employment and public hostility. That's what the case says itself. And that showing was established in the *Buckley v. Valeo(?)* case in which contributors to minor political parties were trying to say: "Well this violates our first amendment rights to require the candidates to disclose us as contributors." And the court said: "Well you only have one or two contributors that are complaining, the showing is a highly speculative showing, that's not enough to show a serious infringement on first amendment rights."

PHILLIPS: Is our *Lowe* case inconsistent with the showing in *NAACP*?

HALLMAN: I don't believe so. *Lowe* says throughout that if you're talking about a matter of federal law as a federal privilege, you apply federal law. And they said that it was properly raised in that case, and I assume that what the court meant in *Lowe* is that by properly raising it, that doesn't mean just the mere assertion of it. That means following the steps of establishing privilege, which means, you not only plead it but you have to establish the privilege, and then the burden would show. A good case to look at for the court on this regard is the *Dole* case out of the 9th circuit, a 1990 case. And that case goes through the history of the showing requirement under federal law. It talks about *Buckley*, and talks about the different cases, and it says that: "If they haven't made the sufficient

showing, then the burden never shifts, the burden doesn't go to the other side to show that there is compelling state interest because there's no showing of first amendment harm for compelling a state interest over _____.

HECHT: Do you think *Buckley* contemplates a weighing, consideration of the reason for the disclosure, which was protection of the electoral process versus the kind of interest that was a first amendment interest that was asserted?

HALLMAN: I believe you could *Buckley* to _____ that requirement.

HECHT: And that's why they said, "That a minor party might be able to come in at some point, and make a showing that would cast it in a different light?"

HALLMAN: That's right.

PHILLIPS: In making that first amendment balance does the need of their requestor to help establish their lawsuit enter into that equation?

HALLMAN: Sure.

PHILLIPS: If the material requested is either on the tangentially marginally relevant or not relevant at all that weighs into the balance?

HALLMAN: In its discovery context all discovery is relevant unless shown otherwise.

PHILLIPS: But I'm looking at it solely on the constitutional issue, because this court hasn't had a habit of...this court has not made a habit of looking at discovery that is not burdensome to produce and reversing it merely on _____.

HALLMAN: Exactly. I don't think it's a situation where if they have no showing, you have to show a great need, and it works that way, or that as their showing increases, you have to show a greater need. I think they have to have sufficient evidence to show that they have been harmed, and then the requirement is to show that there's compelling state interest to overcome that. It's not a see-saw kind of deal where you look under various scales of whether the need is ...if this court finds that they have established sufficient evidence to make a first amendment showing, then, I, agree, my burden then is to show that there's compelling state interest. Compelling state interest would have to show a substantial relation or a nexus between what we're trying to look for and what the evidence may reveal.

SPECTOR: If there is no lawsuit is it your position that the Nonprofit Corporation Act still requires disclosure?

HALLMAN: Yes.

ABBOTT: Why does *Tilton* not apply, and I will put it in this context. In a brief filed on behalf of the real parties, that doesn't have your name on it, it says: "*Tilton* differs substantially from this case because there was no statute requiring public disclosure in *Tilton*." My question is this, if we're dealing with constitutional issues and constitutional rights, why would those not trump the statute, and, therefore, we apply them _____ in *Tilton*?

HALLMAN: I said in my brief, I didn't see any establishment or showing that *Tilton* would be required under law. So that would distinguish it. But I think it is also distinguishable and there is a statute that requires public disclosure, that they voluntarily submitted themselves under. They voluntarily submitted themselves to be under that statute. And under the cases that we've cited, the *Freeman v. Hitto*(?) case for example, which is a 9th circuit case, 1994, which says: "That if you voluntarily choose an option that may require disclosure, then you have in effect waived your first amendment rights." Also, the *Papps*(?) case that we pointed, which is a Texas case, says that: "there's no legitimate expectation of privacy in records that are required to be made available to the public." And so, as regards to the first amendment context, the statute is very important, because if they've chosen out of the various entities they could have been a corporation, not subject to the disclosure requirement, they could have been a partnership, only required to disclose to their partners, they could have chosen to be one of these other nonprofit corporations that has members for example. If they had done that, they wouldn't be subject to the public disclosure requirement and we wouldn't be here discussing first amendment concern.

And so those cases, I believe, the *Framing* case and the *Papps* case show that when you have such a statute, there is not a first amendment concern.

GONZALEZ: The basis for your lawsuit was an allegation that there was some illegal use of tax money, because BACALA was city property. Now that BACALA is out of city property, what is the basis or the need for disclosure of their financial record?

HALLMAN: There's a couple of good answers to that. What you're asking me is what is the relevance or are you asking me about the jurisdiction?

GONZALEZ: Both.

HALLMAN: Let me address the relevance first. They have concentrated in their briefing upon the public funds issue.

GONZALEZ: That was the very foundation of the lawsuit, was it not?

HALLMAN: Well there's another foundation of the lawsuit, and that's the property use issue. Our contention that it is also that the property was misused against the purposes of the usual

deed and that, therefore, the deed should revert to the city.

GONZALEZ: BACALA could care less about that?

HALLMAN: It's important as far as we're concerned in getting the records under a relevance standpoint. Because if they can show that it wasn't misused, in other words, the nature of the activity that BACALA was operating in was within the purposes of the deed, if they can show that, then they beat us on that argument. If we can show that they're not a local public interest group as they claim to be, that they are in fact a special interest group. That is perhaps supported by Iran or something, you know we don't know what the records are going to show, but if we could show that, that they weren't this local public interest group that they are alleged to be so that it's within the purposes of that deed, then the evidence would tend to follow us on that.

SPECTOR: How could those donor records show that?

HALLMAN: The donor records are going to show who contributed. And if for example they get all their money from the Kingdom of Iran, or if they get all of their money from the Alliance, or if they get all their money from the City of Corpus Christi, those records are very relevant. They've said that they are supported by the general public. They have said that they are supported by local citizens. Their defense to this property use issue is: "Well we're just doing this to help economic development because we're backed by our citizens to do that."

PHILLIPS: But there are less restrictive means I suppose.

HALLMAN: Our argument of course is that the protective order supplies the most restrictive means.

GONZALEZ: What are we to make about the intimidation that's been alleged here, the letters in the record of lawyers writing to individuals to support BACALA, threatening lawsuits and threatening them: "Are you covered, are they going to stand by you and all of that," in other words trying to stifle association and treat them on association?

HALLMAN: That's their only showing, those letters by one lawyer, one law firm. Those letters were written in 1993, this lawsuit came up in 1997. There was no testimony about what those letters were or what those letters meant.

GONZALEZ: They speak for themselves. It is very clear, the lawyer said: "If I didn't threaten you, I meant to threaten you."

HALLMAN: There was plenty of evidence before Judge Garza that there had been no boycott, the plaintiff's attorney still maintain good friendships and good relationships with the people mentioned in the letter. Even the author of the letter was questioned and he said: His only concern,

at least with regard to Ex. 12, was to advise people why he wasn't making the same contribution that he had made for 30 years, because he didn't like what they were doing with their video _____." Now if the showing that this court is going to require is all a nonprofit organization has to show that they received a letter that somebody didn't like them, they didn't want to do business with them, then every nonprofit organization in this state could qualify, and could shield their records in contravention to what the legislature wanted. The legislature wanted to prevent charity fraud in both spending and fundraising activities. And if we act as they ask you to, on this deminimis showing, the showing where there's been no real harm, there's been nobody losing a job, there's been no public hostility toward this organization, if on that showing this court writes that this organization can shield all of its fundraising from the public eye, then every organization can do it. If every organization can do it, then this state is ripe for charity fraud.

There are a couple of things that I would like to point out and address Justice Spector's question. The *Billotte* case, I believe, although it wasn't briefed and this is just from my research, dealt with free speech. It does not deal with the right to freedom of association. The cases that we cited, particularly *Roberts v. US Jaycees*, which is a 1984 case, which is subsequent to the *Billotte* case, that very clearly says that corporations don't have a right to freedom of association, and we ask you that if you find that mandamus should issue only to extend it to individual donors, because freedom of association is a right of personal liberty, and corporations do not have such personal right.

BAKER: But the donors have that right don't they?

HALLMAN: The corporate donors?

BAKER: No, the individual donors who you are trying to find out?

HALLMAN: If this court finds that there has been a sufficient showing that the individual donors's rights to freedom of association are seriously infringed upon, yes, then, perhaps...

BAKER: You say you have two points in your litigation which is to see whether tax money has improperly been paid over by either the city or the Alliance to BACALA, or whether McCalla improperly used the property when they were a tenant there, is that correct, that's your two issues? Why do you need to know who gave money otherwise to BACALA if they're not taxpayer money so forth in the hands of a taxpaying entity that gets taxpayer's money? Secondly, can't you find out whether the property was improperly used by deposing the people who were shown on the documents you did get as the directors or officers of BACALA?

HALLMAN: I wish we could We had testimony from Keith Arnold, who is the CEO of the Alliance, who says: "No public monies ever went to BACALA." Then we find out from their records that they did in fact go to BACALA. There was on the convention and visitors account, there's listings of BACALA...

BAKER: Well so you found out what you wanted to know...

HALLMAN: No, no not necessarily. We also deposed Kim Keith, who is the executive director of McCalla...

BAKER: Whether she answers or not is part of this mandamus before us?

HALLMAN: Really, not this question. We asked her if she had ever received any public funds? And it turns out that they in fact, the Alliance had been given funds to them. At the hearing said: "Well these are just checks people give to us that we funnel through an Alliance check to them." But there's some real serious questions that we have as to...that we can only get by seeing how they get their funding, as to what kind of an entity it is, how it is funded, what public funds it has received, how it operates, and why it operates in a public office space in Corpus Christi receiving public telephone service...

BAKER: But doesn't the record show they are no longer there?

HALLMAN: Well I don't think that makes a difference.

BAKER: But doesn't the law also say that you can't recover past tax money that was paid, you can only stop it in the future?

HALLMAN: I think those prior cases say that. But there's a case called *Bryce* which we've cited in the initial brief, 1978 Corpus Christi case, which allows you under that second part of the provision which says a taxpayer may maintain a lawsuit against the officer and the party receiving the illegal funds to recover the amounts so paid.

BAKER: Why don't you just ask for an injunction to get both sides to not spend or take any money and be done with it?

HALLMAN: That's one thing I wanted to point out, they haven't agreed to an injunction. They just say, "I promise I won't do it anymore." And if that could be enough, that could end every lawsuit in the world. Just have a defendant to stand up and say I promise I won't do it anymore. They have not agreed to an injunction.

BAKER: Is an injunction part of your requested relief in the TC?

HALLMAN: Yes, it is.

BAKER: But you haven't tried that issue?

HALLMAN: We have not tried any of the issues yet. The other thing I would like to point

out is that, if you look carefully at the Kim Keith deposition questions, which are also raised on this mandamus, you will see that she is not asked one question about what is the identity of the donors. The 14 questions she was asked are: Did you agree to a billboard arrangement at this office? Did you have an agreement with Philip Morris? Those type of questions. And I don't think that they fall within the category of what y'all are looking at. And I think y'all should be very careful when you go through reviewing this mandamus to look at those Kim Keith deposition questions and the objections to them, because there is one I noticed last night as I was reading them, where it was "I object," that was it.

We believe that this court does not have jurisdiction to review mandamus. To review jurisdiction on a mandamus and for this court to hold otherwise, it would have to overrule *Canadian Helicopters v. Widdick* and *Bell Helicopter Textron v. Walker*.

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REBUTTAL

LAWYER: What counsel just said about what Kim Keith was asked is the reason that's what's wrong with this lawsuit, because Kim Keith, the Ex. Director, was not asked: "Did you receive any money from the City of Corpus Christi?" She was never asked that question, the very heart of the lawsuit. Rather she was asked: "Where does your money come from?" She wasn't asked whether or not she received any from the City of Corpus Christi, that's what the lawsuits about, and when you talk about relevancy or irrelevancy, counsel just gave the greatest argument why the first amendment is supreme. I know nothing more chilling than to allow individuals that have no standing to come forward and inquire into your records about where your money came from - not where it went. The legislative history of the Nonprofit Corporation Act was about accountability on how the money was spent, not where it came from.

ABBOTT: Why does it use the word "income?" Not the legislative history but according to the arguments of opposing counsel, he referenced "income."

LAWYER: I would disagree with counsel on that, and I would further suggest to the court, that that's totally irrelevant to the issues in this lawsuit. And, although, it may be unpopular in this US to say the money came from Iran or Iraq, it has nothing to do with the lawsuit that's before the court.

OWEN: In keeping track with a charity, let's suppose a charity said "We spend 90% of our contributions on direct aid, and only 10% on overhead," and they advertise that for fundraising. How would you ever prove up either the validity or the falsity of those representations unless you had some way of determining what the gross donations were?

LAWYER: And we gave them all that. We gave them our tax returns. What they want is to go beyond that, and say: "Where did the money come from." We gave them all that. We gave

LAWYER: It's amounts.

OWEN: Do you have financial statements?

LAWYER: I don't believe we do have financial statements.

OWEN: Are you audited?

LAWYER: We have not been audited. The Alliance was audited, though, your honor. And the audit revealed that no public monies were given to BACALA.