THE BUCKEYE INSTITUTE

December 9, 2019

Victoria Judson
Associate Chief Counsel
Office of the Associate Chief Counsel
CC:PA:LPD:PR (REG-102508-16), Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20224

RE: Comments on REG-102508-16: Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations

Dear Ms. Judson,

The Buckeye Institute applauds the IRS's proposed REG-102508-16, which would no longer require 501(C)(4) organizations to disclose donor lists to the government, and urges its adoption.

Because think-tanks and public policy organizations routinely take positions opposing laws, public policies, and direct government action,[1] donors to these organizations reasonably fear reprisal from both the public and the government.[2] The Buckeye Institute has firsthand experience with the "chilling effect" on the freedom of association suffered based upon donors' articulated fear of unlawful retaliation by the IRS.

In 2013, shortly after the Ohio General Assembly relied upon Buckeye's arguments in rejecting Medicaid expansion, Buckeye received an audit notice from the IRS's Cincinnati office, which was itself infamously under congressional investigation for conducting illegal, politically-motivated audits.[3] Understandably, some Buckeye donors feared that Buckeye's conspicuous audit was retaliation for Buckeye's role in the Medicaid debate. Donors expressed concern that if their names appeared on Buckeye's audited records, then they too would be subject to retaliatory audits or government antagonism. Thus, many donors made smaller, anonymous, cash donations—foregoing donation receipts—hoping to avoid political retribution.

Wisconsin's notorious "John Doe" investigation provides another troubling example of government-sanctioned donor harassment. "Initially a probe into the activities of Governor

[1] Compare, e.g., Brief of 11 States as *Amici Curiae* in No. 11-400, *Florida v. Dep't of Health & Human Servs.*, 132 S. Ct. 2566 (2012) (arguing in favor of Medicaid expansion) with Brief of *Amici Curiae* Center for Constitutional Jurisprudence, *et al.*, in No. 11-400, *Florida*, 132 S. Ct. 2566 (2012) (taking opposite position).
[2] See *John Doe No. 1 v. Reed*, 561 U.S. 186, 200 (2010).
[3] Gregory Korte, **Cincinnati IRS agents first raised Tea Party issues**, *USA Today*, June 11, 2013.

Walker and his staff, the ['John Doe'] investigation expanded to reach nonprofits nationwide that made independent political expenditures in Wisconsin, including the League of American Voters, Americans for Prosperity, and the Republican Governors Association."[4] The raids—some executed at homes in the middle of the night by police with guns drawn—targeted individuals associated with those public policy organizations.[5] Awakened by floodlights and uniformed officers pounding on their doors, donors watched investigators search their homes for an astonishing range of documents, all because they had contributed to certain political advocacy groups.[6] The Wisconsin Supreme Court eventually stopped the unconstitutional "John Doe" investigations and concluded that the citizens investigated "were wholly innocent of any wrongdoing."[7] But the lingering "chilling effect" of those audacious raids remains to be seen and may never be fully known.

Finally, government promises to secure and keep private information confidential too often have proven hollow. In 2012, for example, the National Organization for Marriage's un-redacted Schedule B was published by the Huffington Post after the IRS illegally released it to the Human Rights Campaign.[8] And in 2016, California posted roughly 1,400 confidential Schedule Bs on the state Attorney General's public website.[9] Government assurances that such breaches will never happen again offer cold-comfort to wary organizations and their prospective donors.

Government's dismal track record means that compelled donor disclosure rules make donating to think-tanks and public advocacy groups less attractive as donors reasonably worry that government intimidation, retaliation, and investigations might follow their financial support. Such a chilling effect on donors, in turn, raises serious First Amendment concerns insofar as it interferes with constitutionally protected freedoms of speech and association.[10] Thank you for taking those concerns seriously.

The Buckeye Institute supports adopting the proposed rule and hopes that Congress soon will repeal the requirement that 501(c)(3) organizations disclose their donors.

Respectfully submitted,
Robert Alt
President and CEO
The Buckeye Institute

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[4] Jon Riches, ***The Victims of "Dark Money" Disclosure: How Government Reporting Requirements Suppress Speech and Limit Charitable Giving***, Goldwater Institute, August 5, 2015.
[5] David French, **Wisconsin's Shame: "I Thought It Was a Home Invasion"**, *National Review*, May 4, 2015.
[6] *Ibid.*
[7] *State ex rel. Two Unnamed Petitioners v. Peterson*, 866 N.W.2d 165, 211-12 (Wisc. 2015).
[8] *Nat'l Org. for Marriage, Inc. v. United States*, 24 F. Supp. 3d 518, 520-21 (E.D. Va. 2014).
[9] *Free Speech 1, Kamala Harris 0*, WALL ST. J. (April 21, 2016).
[10] *Rumsfeld v. Forum for Academic and Inst'l Rights, Inc.*, 547 U.S. 47, 69 (2006).