

No. 25-3170

**In the United States Court of Appeals
for the Sixth Circuit**

THE BUCKEYE INSTITUTE,

Plaintiff-Appellee

v.

INTERNAL REVENUE SERVICE, *et al.*,

Defendants-Appellants

On appeal from the United States
District Court for the Southern District of Ohio
Hon. Michael H. Watson, District Judge
(Dist. Ct. No. 2:22-cv-4297)

Brief of the Liberty Justice Center as *Amicus Curiae*
in Support of Plaintiff-Appellee

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Disclosure Statement

Counsel for the Liberty Justice Center, Ryan Morrison, certifies that the Liberty Justice Center is not a subsidiary or affiliate of a publicly owned corporation and that no publicly owned corporation has a substantial interest in the outcome of this litigation.

/s/ Ryan Morrison

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INTEREST OF *AMICUS CURIAE*¹

The Liberty Justice Center is a nonprofit, nonpartisan, public-interest litigation firm that seeks to protect economic liberty, private property rights, free speech, and other fundamental rights. The Liberty Justice Center pursues its goals through strategic, precedent-setting litigation to revitalize constitutional restraints on government power and protections for individual rights. As part of its mission to defend fundamental rights, the LJC works to protect the privacy of citizens and civil society.

SUMMARY OF ARGUMENT AND INTRODUCTION

In a free society, individuals have privacy and the government is transparent. Taxpayers and citizens have the right to know how the government is spending the people's money.

The reverse is not true: no one has a right to know how private citizens spend any of their money. And as far back as 2014, when the harassment campaign against then-Mozilla CEO Brandon Eich led to

¹ All parties have consented to the filing of this amicus brief. No counsel for a party authored this brief in whole or in part. No person other than Amicus Curiae and its counsel made any monetary contribution intended to fund the preparation or submission of this brief.

his resignation, malicious actors have used whatever disclosures were available to socially ostracize and financially ruin those they disagree with. Though not as immediately dangerous as the Klan activity that gave rise to cases such as *NAACP v. Alabama*, this “cancel culture” springs from the same mindset: agree with me or suffer.

When cancel culture is aided and abetted by government action—like laws based on the erroneous presumption that associational records should be open to public scrutiny—constitutional rights come into play.

ARGUMENT

I. The First Amendment’s guarantees for free association protect all organizations, whether or not they are controversial.

Nearly seventy years ago, the Supreme Court observed: “It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute . . . a restraint on freedom of association.” *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 462 (1958). There, the Supreme Court was concerned about the impact of disclosure on the NAACP’s members, who faced burning crosses and church bombings if their affiliation became public. The Court’s concern about exposure to “economic reprisal, loss of employment, threat of physical

coercion, and other manifestations of public hostility” illustrated the importance of privacy, but it did not set up a requirement that a group prove a substantiated fear of retaliation before qualifying for protection from governmental intrusion or investigation. *Id.*

We know this from the cases that the Court decided shortly thereafter. When the Florida State Legislature asked for the NAACP’s membership lists, the Supreme Court recognized the “strong associational interest in maintaining the privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs.” *Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539, 555–57 (1963).

“[O]f course, all legitimate organizations are the beneficiaries of these protections.” *Id.* (emphasis added); accord *id.* at 569–70 (Douglas, J., concurring). The need for these protections is “more immediate and substantial” for groups facing retaliation because of their unpopular stances, but a reasonable fear of retaliation is not a prerequisite to qualify for the First Amendment’s associational guarantee. *Id.* at 557. All legitimate organizations receive these protections, and it is not their burden to provide specific evidence of past retaliation, harassment, and

threats to justify that protection. *See Pollard v. Roberts*, 283 F. Supp. 248, 258 (E.D. Ark. 1968) (three-judge court), *aff'd per curiam*, 393 U.S. 14 (1968)).

As the Supreme Court of California observed, this approach not only is constitutionally necessary, but it also serves the important purpose of protecting all citizens from retaliation. Many groups may be broadly popular but, nevertheless, engender a real possibility of retaliation from one disagreeable segment of society. *Britt v. Superior Court*, 574 P.2d 766, 772 (1978).

And it is impossible to predict ahead of time when a group may become controversial or when opposing activists may choose to make one group a cause célèbre such that donors who previously supported a mainstream group, and thus were disclosed, may suddenly find themselves associated with a cause that prompts boycotts or other retaliation. *See, e.g., Taren Kingser & Patrick Schmidt, Business in the Bulls-Eye? Target Corp. and the Limits of Campaign Finance Disclosure*, 11 Elec. L.J. 21, 29–32 (2012) (Target and Best Buy find themselves subject to unexpected boycotts for supporting a Chamber of Commerce group that ran ads supporting a Republican candidate for

governor who supported lower taxes and less regulation but also supported traditional marriage).

The First Amendment finds its most urgent application as a shelter for views and voices that are on the margins of our society. But this truth does not mean that mainstream voices do not enjoy its guarantees or that unpopular groups get extra protection. This Court should reject any framework that starts from the premise that disclosure is the norm, and a group must show its need for privacy by proving its unpopularity or retaliation, harassment, and threats to justify that protection. Instead, the Court should start from a presumption of free and private association and place the burden on the government to prove its need to infringe the First Amendment rights of civil society. *See United States v. Playboy Entm't Grp.*, 529 U.S. 803, 816 (2000) (“When the Government restricts speech, the Government bears the burden of proving the constitutionality of its actions.”).

II. Donor disclosure abets cancel culture.

The widening political divide, coupled with increasing intolerance is covered in the news daily. The recent assassinations of Melissa Hortman and Charlie Kirk may have grabbed the headlines, but this

Court should also be aware of a more pervasive, insidious mindset that has gotten large numbers of Americans engaged in a modern-day equivalent of tarring and feathering. These pernicious assaults on people's careers for having the temerity to disagree about hot-button political issues undermine the free exchange of ideas that is supposed to underpin the First Amendment. "[L]iberalism is supposed to clear a wider space for debate than other political systems and allow a wider range of personal expression." Ross Douthat, *10 Theses About Cancel Culture*, THE NEW YORK TIMES (July 14, 2020).² But "a climate of cancellation can succeed in changing the way people talk and argue and behave even if it doesn't succeed in destroying the careers of some of the famous people that it targets." *Id.* And with the rise of a monolithic internet culture,

[f]or would-be cancelers, the chaos of the internet makes it seem that much more important to establish rigorous new norms, lest the online racists win . . . but for people under threat of cancellation, it feels like they're at risk at being shut out of a journalistic or academic marketplace that's ever more consolidated, or defying a consensus that's embraced by every boardroom and H.R. department.

Id.

² <https://www.nytimes.com/2020/07/14/opinion/cancel-culture-.html>

One of the most obvious cases is celebrities being canceled for both legitimate and illegitimate reasons. These include *Star Wars* actress Gina Carano (comments about COVID-era masking policies and questioning the 2020 election),³ *Harry Potter* author J.K. Rowling (rejecting transgender ideology),⁴ and model Chrissy Teigen (cyberbullying Courtney Stodden, Avril Lavigne, Lindsay Lohan, and Sarah Palin).⁵

Of course, most celebrities have some financial cushion to fall back on. Ordinary people do not and are far more at the mercy of the outrage mob.

³ *Star Wars: some Mandalorian Fans Unhappy with Gina Carano*, BBC (November 22, 2020)

<https://www.bbc.co.uk/newsround/55008644#:~:text=While%20some%20fans%20who%20disagree%20with%20Carano,disliked%20and%20disregarded%20because%20of%20their%20opinions.>

⁴ Katie Camero, *What is ‘Cancel Culture?’ J.K. Rowling Controversy Leaves Writers, Scholars Debating*, MIAMI HERALD (October 23, 2020)

<https://www.miamiherald.com/news/nation-world/national/article244082037.html>

⁵ Rasha Ali, *“There is no Winning”: Chrissy Teigen Opens Up about Being in the “Cancel Club,”* USA TODAY (July 15, 2021)

<https://www.usatoday.com/story/entertainment/celebrities/2021/07/15/chrissy-teigen-cancel-club-status-canceled-bullying-mean-tweets/7976685002/>

For one notable example, in 2020, the *Washington Post* decided that a tasteless Halloween costume (of Megyn Kelly in blackface, after Kelly had been fired by NBC for claiming to not understand why blackface was racist) was a newsworthy event. Josh Barro and Olivia Nuzzi, *Why did the Washington Post get this Woman Fired?* INTELLIGENCER (June 24, 2020).⁶ The person who wore the costume was not a public figure, and the costume party in question had happened almost two years before the article was published. *Id.* The alleged newsworthiness of the story was that the party occurred in the home of a *Washington Post* cartoonist and in the vicinity of a noted columnist (the columnist reported not seeing anyone in blackface). *Id.* It turns out that the entire report was done at the persistent insistence of a management consultant who attended the party as a guest of a guest, confronted the costume-wearer, and then harassed *Washington Post* columnists for over a year about the incident. *Id.* The costume-wearer—herself a liberal—was fired when she alerted her employer to the brewing media

⁶ <https://nymag.com/intelligencer/2020/06/why-did-the-washington-post-get-this-woman-fired.html>

firestorm. James Kirchick, *The Lost Honor of Sue Schafer*, THE AMERICAN INTEREST (June 28, 2020).⁷

Amicus has experience with cancel culture: it represented a protester who was present at President Trump’s rally on January 6, 2021. Although this individual did not enter the Capitol building, she took a photograph of the Capitol dome with protesters’ flags flying in the foreground and posted it on her Instagram page. Meta, Instagram’s owner, after putting out a statement saying that it would remove “incitement or encouragement of the events at the Capitol, including videos and photos from the protesters,” which “represent promotion of criminal activity,” deleted this individual’s Instagram account. Her classmates determined that she had been at the protest, deemed her photograph a “promotion of criminal activity” in accordance with Meta’s statement, and published a number of posts on the student Instagram community, calling her out for having “attended this violent, pro-Trump event,” and “putting [students] at risk . . . by . . . participating in an attempted coup on behalf of a man who promotes racism, sexism,

⁷ <https://www.the-american-interest.com/2020/06/28/the-lost-honor-of-sue-schafer/>

homophobia, xenophobia, ableism, and so much more.” One account promised to “personally be disclosing any student who attended this riot,” to “hold your classmates accountable.” As a result, the protester—who, again, did not enter the Capitol that day—suffered economic damages as to her future employment status and reputational harm as a result of that campaign against her. *Mahoney v. Facebook*, No. 3:22-cv-02873-JD (N.D. Cal.).

And it’s not just the political left rabidly canceling its opponents. In 2022, an African American flight attendant was fired for sharing a cartoon of Donald Trump wearing a Klan hood on her personal social media. Meena Venkataramanan, *Delta Flight Attendant Fired over Anti-Trump Cartoon, Lawsuit Says*, THE WASHINGTON POST (August 15, 2022).⁸ And in contrast to Harvard University’s tolerance of an anti-Apartheid encampment in 1986, a labor movement tent city in 2001, and an Occupy encampment in 2011, Harvard threatened mass suspensions for pro-Palestine protesters occupying Harvard Yard in 2024. Alison F. Johnson and Steven Levitsky, *Suspending Student*

⁸ <https://www.washingtonpost.com/travel/2022/08/15/delta-trump-cartoon/>

Protesters Would be a Palestine Exception to Free Speech, THE HARVARD CRIMSON (May 8, 2024);⁹ Emma H. Haidar and Cam E. Kettles, *Harvard President Garber Breaks Silence on Encampment, Threatens “Involuntary Leave” for Protesters*, THE HARVARD CRIMSON (May 6, 2024).¹⁰

And to come full circle, the pressure to crack down on pro-Palestine protests is coming from the government. To be clear, there may be legitimate concerns about student safety, although courts generally have not found that to be the case. *See, e.g., President & Fellows of Harv. Coll. v. United States HHS*, No. 25-cv-11048, 2025 U.S. Dist. LEXIS 171326 (D. Mass. September 3, 2025) (granting summary judgment on plaintiffs’ claims of retaliation and coercion related to a federal funding freeze of Harvard University); *American Ass’n of Univ. Professors v. Trump*, No. 25-cv-07864, 2025 U.S. Dist. LEXIS 224922 (N.D. Cal. Nov. 14, 2025) (enjoining Trump Administration from restricting federal funds to the University of California based on alleged

⁹ <https://www.thecrimson.com/article/2024/5/8/levitsky-frank-johnson-suspending-protesters-palestine-exception/>

¹⁰ <https://www.thecrimson.com/article/2024/5/6/garber-threatens-suspension-encampment/>

discrimination without following Title VI procedures). In the first case, the Trump Administration, alleging that Harvard “failed to protect American students from antisemitic violence and harassment” (while failing to identify any specific instance of antisemitism), froze \$2.2 billion in multi-year grants to Harvard. 2025 U.S. Dist. LEXIS 171326 at *14, *19. In the second case, the government skipped the required notice and hearing processes under Title VI and instead simply froze \$584 million in research funding to UCLA, citing alleged civil rights violations, and proposed a settlement to restore funding under which UCLA would have to, *inter alia*, change its handling of student protests (to come down more harshly on protesters) and adopt the Administration’s views on gender. 2025 U.S. Dist. LEXIS 224922 at *8–9. The record there showed that the government used “allegations of antisemitism to justify funding cancellations, with their intent is to coerce universities into purging disfavored . . . viewpoints from their campuses and replace them with views that the Administration favors.” *Id.* at *17–18.

These are hardly the only two instances of recent government coercion against disfavored speech. Using similarly dubious rationale,

the government is threatening \$510 million in funding for Brown University; \$1 billion for Cornell; and \$790 million for Northwestern. *Trump is Going After These American Universities. Here's Why*, THE ECONOMIC TIMES (April 16, 2025).¹¹ Looking at how campus protests at Brown and Northwestern were resolved, it is apparent that the government seeks to punish these universities for negotiating with, rather than punishing, the protesters. *See, e.g., Kathleen Foody, Northwestern University's Deal with Student Protesters Offers Example of Successful Negotiations*, ASSOCIATED PRESS (May 1, 2024).¹² To be clear, the grant cancellations are harming people other than the targeted speakers. And the government's efforts are absolutely having a chilling effect on speech. For example, a U.S. citizen student at Wesleyan University, which has also seen funding cuts,¹³ reported no longer being able to go to a protest without first considering, "should I

¹¹ <https://economictimes.indiatimes.com/nri/study/trump-is-going-after-these-american-universities-heres-why/harvard-university/slideshow/120332824.cms>

¹² <https://apnews.com/article/northwestern-students-israel-palestinians-protest-c3698198f13c986d6bc238ff96081f9d>

¹³ A Martinez and Destinee Adams, *Wesleyan University President says Trump's Antisemitism Fight Doesn't Protect Jews*, NPR (April 17, 2025) <https://www.npr.org/2025/04/17/nx-s1-5366667/trump-defunding-university-antisemitism-wesleyan>

put on a face mask? . . . Should I be seen?” *How Trump’s College Crackdown is Raising Concerns About Free Speech and Academic Freedom*, PBS NEWS (May 6, 2025).¹⁴ And again it must be stressed: in this time of rising intolerance, this is what *the government*, which is ostensibly constrained by the First Amendment, is doing. Private citizens operate under no such restraints, and at times are all too eager to take cues from their elected leaders. The government should not facilitate that impulse by violating other citizens’ rights to free speech and privacy.

While there might be a time and a place for public shaming, for example, “to uphold social bonds and make sure people within communities . . . understood the norms,” cancel culture has gone far beyond that. Nicole Dudenhoefer, *Is Cancel Culture Effective?* PEGASUS (Fall 2020)¹⁵ There is a difference between “call-out” culture, which “brings attention to someone’s mistakes and gives them a chance to learn from and correct the issue,” and cancel culture, which “immediately labels them as bad, sometimes permanently.” Iris Choo,

¹⁴ <https://www.pbs.org/newshour/show/how-trumps-college-crackdown-is-raising-concerns-about-free-speech-and-academic-freedom>

¹⁵ <https://www.ucf.edu/pegasus/is-cancel-culture-effective/>

It's Time to Cancel "Cancel Culture," TEXAS TECH UNIVERSITY (March 25, 2024).¹⁶ As Jonathan Rauch has explained,

Criticism is expressing an argument or opinion with the idea of rationally influencing public opinion through public persuasion, interpersonal persuasion. *Canceling* comes from the universe of propaganda and not critical discourse. It's about organizing or manipulating a social environment or a media environment with a goal or predictable effect of isolating, deplatforming, or intimidating an ideological opponent. . . . It's about making an idea or a person socially radioactive. . . . It is not about ideas.

Nick Gillespie, *How to Tell If You're Being Canceled*, REASON, Dec.

2020, at 46 (emphasis in original).¹⁷ When people are afraid to learn and engage on any topic because saying the wrong thing could lead to a loss of business or employment, their freedom of speech is impaired.

And it makes no difference if the “repressive effect compulsory disclosure” has on a private donor “follows not from *state* action but from *private* community pressures. The crucial factor is the interplay of governmental and private action, and for it is only after the initial exertion of state power represented by the production order that the private action takes hold.” *NAACP*, 357 U.S. at 463 (emphasis in original).

¹⁶ <https://www.depts.ttu.edu/rise/Blog/cancelculture.php>

¹⁷ <https://reason.com/2020/11/01/how-to-tell-if-youre-being-canceled/>

An open society “takes physical coercion off the table;” it’s a “more peaceful society, because you’re settling differences of opinion without using coercion to do it.” Gillespie, *How to Tell If You’re Being Canceled*, *supra*. at 48. An “open society is incomparably better at producing knowledge than any other society, because it allows us to make errors and not be punished for making errors.” *Id.* The First Amendment protects our open society. It prohibits the government from using coercion or facilitating coercion to stop certain ideas and the people who hold them. The First Amendment allows criticism of ideas, but is incompatible with cancel culture, which is not about ideas, but about isolating people with whom one disagrees.

CONCLUSION

The government does not have an interest in violating the First Amendment by compelling organizations to publicly disclose their supporters. Such disclosure laws are not about facilitating criticism; they are about isolating people with “bad” ideas. The district court’s order should be affirmed.

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CERTIFICATE OF COMPLIANCE

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