No. 25-3170

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BUCKEYE INSTITUTE,

Plaintiff - Appellee,

v.

INTERNAL REVENUE SERVICE; WILLIAM LONG, in his official capacity as Commissioner of Internal Revenue; U.S. DEPARTMENT OF THE TREASURY; SCOTT BESSENT, in his official capacity as SECRETARY OF THE TREASURY,

Defendants - Appellants,

INTERLOCUTORY APPEAL FROM THE ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO

BRIEF OF *AMICUS CURIAE* AMERICAN LEGISLATIVE EXCHANGE COUNCIL SUPPORTING PLAINTIFF-APPELLEE

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UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit
Case Number: 25-3170 Case Name: Buckeye Institute v. IRS, et al.

Name of counsel: Theodore M. Cooperstein

Pursuant to 6th Cir. R. 26.1, American Legislative Exchange Council
Name of Party
makes the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation? If Yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No

CERTIFICATE OF SERVICE

I certify that on November 26, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

s/ Theodore M. Cooperstein
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This statement is filed twice: when the appeal is initially opened and later, in the principal briefs, immediately preceding the table of contents. See 6th Cir. R. 26.1 on page 2 of this form.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTEREST OF *AMICUS*[1]

The parties respectively consented to the filing of this brief.

The American Legislative Exchange Council ("ALEC") is a 501(c)(3) tax-exempt organization directly subject to the Schedule B donor disclosure requirement challenged in this case. ALEC serves as America's largest nonprofit, nonpartisan voluntary membership organization of state legislators. With a membership base of hundreds of private sector organizations and legislator-members in all 50 States, ALEC's state legislative membership amounts to nearly one-quarter of the state legislators in the United States. ALEC and its members are dedicated to the principles of limited government, free markets, and federalism.

As a 501(c)(3) organization, ALEC annually files Form 990 and Schedule B with the IRS, disclosing the identities of substantial contributors. ALEC's members— state legislators who draft, debate, and implement disclosure laws—possess unique expertise in how such requirements operate in practice. ALEC writes to provide this Court

[1] This brief was not authored in whole or in part by counsel for any party, and no person or entity other than amicus or its counsel has made monetary contributions to its preparation and submission.

with critical insight, drawn from both institutional experience and legislative expertise, into why disclosure requirements accompanied by confidentiality promises nonetheless chill associational freedom and invite abuse.

ALEC has directly experienced the harms this case addresses. Various state agencies, at the urging of ALEC's ideological opponents, have raised unfounded suspicions against ALEC to score political points and undermine ALEC's reputation. Rather than persuading minds in a democratic debate, ALEC's ideological opponents, together with various States, initiated investigations under the pretense of lobbying and campaign finance violations to chill ALEC's speech, harm its reputation, and hinder its operations. This pretext is evidenced by, inter alia, the fact that these complaints demanded ALEC identify its members. Despite the obvious First Amendment violations of such inquiries, ALEC was forced to spend significant resources to defend itself.

Naturally, ALEC prevailed in these state actions — but at great cost. To protect its constitutional rights against future political aggressions, ALEC offers its perspective to the federal courts.

SUMMARY OF ARGUMENT

The IRS asks this Court to trust that confidentiality protections will prevent the harms the First Amendment guards against. But ALEC's members know that confidentiality promises fail. The First Amendment does not permit government to compile databases of citizens' associations based on promises that repeatedly prove hollow.

The question in this case is not whether the IRS's confidentiality protections are theoretically adequate. It is whether Schedule B's requirement that 501c3 organizations annually disclose all substantial contributors to a government database survives exacting First Amendment scrutiny given the IRS's admitted inability to systematically use this information and the real-world harms such disclosure causes. ALEC's experience answers that question: Even with confidentiality promises, compelled disclosure of donor and member information chills association and invites abuse. ALEC's members — state legislators who both draft disclosure laws and are targeted by them — have witnessed this dynamic firsthand at the state level and understand how federal databases enable and encourage parallel state-level demands.

The IRS concedes that Schedule B's primary value lies in its "deterrent effect" on voluntary compliance — not in actual IRS use for investigations or enforcement. Brief for Appellant at 37. This admission is fatal under *Americans for Prosperity Found. v. Bonta ("AFP")*, which requires the government to demonstrate actual necessity, not theoretical administrative benefits from maintaining databases of citizens' associational affiliations.

ARGUMENT

ALEC offers this Court a perspective unavailable elsewhere: institutional experience as both victim and expert. As a 501c3 organization, ALEC files Schedule B annually and has substantial contributors whose identities must be disclosed to the IRS. As an organization of state legislators, ALEC's members possess expertise in disclosure law design, having drafted, debated, and implemented such requirements in legislatures across the nation. And as a frequent target of ideologically motivated investigations, ALEC has directly experienced how disclosure requirements — even those accompanied by statutory confidentiality provisions — are weaponized to chill speech and burden association.

This brief documents ALEC's experiences with disclosure-based harassment to demonstrate three critical points: First, confidentiality promises fail in practice, as ALEC has witnessed at the state level. Second, the existence of government-compiled donor databases — whether federal or state — enables and encourages ideologically motivated investigations and harassment campaigns. Third, even when organizations prevail against such harassment, the constitutional injury has already occurred through diverted resources, chilled membership, and deterred association. These real-world consequences prove that Schedule B's universal, indiscriminate collection of donor information cannot survive the narrow tailoring requirement of exacting scrutiny.

I. EXPERIENCE SHOWS THE REAL DANGER OF DISCLOSURE OF DONOR IDENTITIES, AND THE MISUSE OF THAT INFORMATION.

Many organizations receive constitutionally intrusive demands instigated by ideological opponents. In these politically charged times, organizations across the ideological spectrum receive demands for the identities of their members and detailed explications of their activities.

These organizations include the NAACP,[2] Americans for Prosperity Foundation,[3] Catholic Charities of the Rio Grande Valley in Texas,[4] the University of Virginia,[5] the AFL-CIO,[6] the Service Employees Union,[7] the Machinists Non-Partisan Political League,[8] supporters of traditional

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[2] *NAACP v. Alabama ex rel. Patterson*, 357 U. S. 449 (1958).

[3] *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595 (2021) ("*AFP v. Bonta,*" or "*AFP*").

[4] I*n re Off. of Att'y Gen. v. Catholic Charities of the Rio Grande Valley*, No. C-2639-23-C, Response and Objections to Rule 202 Petition at 4 (Hidalgo Cnty. Dist. Ct., July 3, 2024) (describing the information that the Texas Attorney General sought, including information concerning Catholic Charities oversight of its volunteers, which could include identifying its volunteers, and documents related to Catholic Charities grant applications) *available at* https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2024/07/7.3.24-Response-FILED.pdf (last visited Aug. 20, 2025).

[5] *Cuccinelli v. Rector & Visitors of Univ. of Va.*, 722 S.E.2d 626, 628-29 (Va. 2012) (noting that the Virginia Attorney General sought internal communications from a professor related to grant applications).

[6] *AFL-CIO v. FEC*, 333 F.3d 168 (D.C. Cir. 2003).

[7] *Dole v. Serv. Emps. Union, Local 280*, 950 F.2d 1456, 1458 (9th Cir. 1991).

[8] *FEC v. Machinists Non-Partisan Pol. League*, 655 F.2d 380 (D.C. Cir. 1981).

marriage,[9] and individuals and organizations allied with former Wisconsin Governor Scott Walker.[10] This practice of demanding the identities of an organization's donors is becoming troublingly common — despite the Supreme Court's consistent rule that state enforcement agencies may obtain confidential membership lists and donor lists only after surviving exacting scrutiny. *See AFP*, 594 U.S. at 608-11.

ALEC was the victim of this conduct, served with unconstitutionally intrusive demands to produce its membership list.[11] In 2021, ALEC faced a persistent bombardment of complaints from 15

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[9] *See Nat'l Org. for Marriage, Inc. v. United States*, IRS, 24 F. Supp. 3d 518, 520-21, 524 (E.D. Va. 2014) (IRS mistakenly released NOM's confidential tax filing to a "known political activist" who then gave the tax filing to NOM's ideological opponent); *see also Citizens United v. FEC*, 558 U.S. 310, 481-83 (2010) (Thomas, J., dissenting) (disclosed donors to California's Proposition 8 campaign faced death threats and were fired from their jobs).

[10] *State ex rel. Two Unnamed Petitioners v. Peterson*, 866 N.W.2d 165, 183 (Wis. 2015) (staggeringly broad search warrants against supporters of Scott Walker netted millions of documents including financial statements, family photos, personal letters).

[11] *See, e.g.*, Letter from the staff of the Maine Commission on Governmental Ethics and Election Practices to the Commission, Investigation of ALEC CARE Software, at 18 (Bates stamped ETH-9) (June 15, 2022) *available at* https://www.maine.gov/ethics/sites/maine.gov.ethics/files/inline-files/7%20-%20Staff%20Report%20on%20ALEC.pdf (last visited Aug. 20, 2025).

state enforcement agencies. These States included: Arizona, Connecticut, Florida, Maine, Michigan, Minnesota, New Mexico, Ohio, Oklahoma, New York, Pennsylvania, Tennessee, Texas, Utah, and Wisconsin.[12] Despite the shallowness of the complaints, ALEC expended significant resources to defend against them and vindicate its educational mission. Compounding ALEC's constitutional injury was that unconstitutionally intrusive demands for the identities of members came from ALEC's ideological opponents.[13] *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 164 (2014) (recognizing that because the universe of complainants before the Ohio Elections Commission is unrestricted, "there is a real risk of complaints from, for example, political opponents.").

Generally, the complaints alleged illegal in-kind political contributions. These nearly uniform complaints alleged that ALEC provided a constituent management software program to its state legislative members called ALEC CARE, a membership benefit afforded

[12] *See id.* at 130 (Bates stamped ETH-121).

[13] *See id.* at 12-18 (Bates stamped ETH-3-ETH-9).

to legislators.[14] Among other remedies, such complaints demanded relevant state enforcement bodies compel ALEC to disclose all of ALEC's legislative members.[15]

The allegations and demands submitted to fifteen state agencies were nearly identical, including the demand for the identity of ALEC's legislative members in each respective State.[16] ALEC hired counsel and spent time and resources in 15 states to protect the identities of its members. *See Susan B. Anthony List*, 573 U.S. at 165-66 (observing that Ohio's false statement statute permitted a speaker's ideological opponent to obtain an advantage by simply filing a false statement complaint without having to prove the statement's falsity and timing the complaint "to achieve maximum disruption" by requiring the speaker to divert time and resources away from the speaker's message). ALEC was required to submit written responses in most of the fifteen states. ALEC was also required to then respond to written follow-up questions from multiple state enforcement agencies. Some state

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[14] *See id.* at 1.

[15] *See, e.g., id.* at 18 (Bates stamped ETH-9).

[16] *See id.* at 142 (Bates stamped ETH-133); *id.* at 130 (Bates stamped ETH-121).

enforcement agencies held hearings as well. Particularly worrisome for ALEC and its members is that it takes only one state agency to compel the production of membership lists to cause permanent harm.

No State found that ALEC committed a violation or required ALEC to disclose its members. Without evidence of wrongdoing, however, Maine interviewed one of ALEC's employees concerning the ALEC CARE software program.[17] This employee provided a live demonstration of the software program and answered the Commission's questions.[18] Consistent with ALEC's earlier written submissions, ALEC demonstrated that the ALEC CARE software was for constituency service purposes, and expressly prohibited its use for campaign purposes.[19] Even still, to protect its constitutional rights, ALEC diverted significant time and resources for this witness to prepare for and then participate in the interview.

Approximately one month after this demonstration, and approximately one year after the complaint was filed, the Commission's

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[17] *See id.* at 5-8.

[18] *See id.* at 5-7.

[19] *See id.* at 5, 137, 142 (Bates stamped ETH-128, 133).

investigators recommended that the Commission dismiss the complaint for lack of sufficient evidence.[20] While no State found that ALEC violated its respective statutes,[21] as a consequence ALEC suffered the threat of disclosing its membership information, and a hollowing of its Maine legislator-member base.[22] According to a former Maine legislator, this was one of many baseless investigations into ALEC launched by an ideological opponent: the Center for Media and Democracy.[23]

ALEC's harassment by state agencies is directly relevant to the Schedule B requirement. While these investigations originated at the state level, the existence of federal donor databases facilitates and emboldens such campaigns. State enforcement agencies know that

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[20] *See id.* at 8-9.

[21] *See* Letter from staff of Maine Commission on Governmental Ethics and Election Practices to the Commission, Update—Investigation of ALEC CARE Software at 1-3, (Feb. 16, 2022) *available at* www.maine.gov/ethics/sites/maine.gov.ethics/files/inline-files/5%20-%20ALEC_web.pdf (last visited Aug. 22, 2025).

[22] *See supra* n.11 at 18 (Bates stamped ETH-9).

[23] *See* Richard H. Campbell, *Maine Compass: Ethics Commission Moves Forward with Nuisance Complaint Against Conservative Group*, Centralmain.com, (March 30, 2022) *available at* https://www.centralmaine.com/2022/03/30/maine-compass-ethics-commission-moves-forward-with-nuisance-complaint-against-conservative-group/ (last visited Aug. 26, 2025).

donor and member information exists in government systems and demand parallel disclosure, using federal requirements as both template and justification. Moreover, Schedule B information can be disclosed to state tax authorities under 26 U.S.C. § 6103(d), making the federal database a direct source for state-level targeting. Once associational information enters any government database — federal or state — it becomes a tool for harassment, regardless of statutory confidentiality promises. The IRS's Schedule B database is thus not merely analogous to the state-level disclosure requirements that enabled ALEC's harassment; it is part of the same ecosystem of government-compiled associational information that invites abuse.

Unfortunately, this was not the first time that an ideological opponent caused a state enforcement agency to investigate ALEC. In May of 2012, the Minnesota Campaign Finance and Public Disclosure Board received a complaint from Common Cause Minnesota.[24] The complaint alleged that ALEC violated Minnesota's lobbying laws

[24] *See Findings of Fact, Conclusions of Law, and Order In the Matter of the Complaint of Common Cause Minnesota Regarding the American Legislative Exchange Council*, Minnesota Campaign Finance and Public Disclosure Board (Feb. 3, 2015) *available at* https://cfb.mn.gov/pdf/bdactions/archive/findings/02_03_2015_ALEC.pdf?t=1750464000 (last visited Aug. 20, 2025).

because ALEC did not register as a lobbyist principal and file the requisite reports required of lobbyists.[25] For these alleged violations, Common Cause Minnesota asked the Campaign Finance and Public Disclosure Board to conduct an audit of ALEC's finances which would effectively reveal the names and addresses of ALEC's donors.[26] *See United States v. Grayson Cnty. State Bank*, 656 F.2d 1070, 1074 (5th Cir. 1981) (an objective chill in the exercise of First Amendment rights is readily apparent where IRS subpoenas documents that will reveal the identities of an organization's members, where the organization opposes IRS policies). In one of its requests, the Board asked ALEC to identify its members and provide its communications with its members.[27]

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[25] *Id*. at 1.

[26] *See Complaint for Violation of Campaign Finance and Public Disclosure Act Submitted by Common Cause Minnesota* at 8 (May 12, 2015) *available at* https://cfb.mn.gov/pdf/bdactions/archive/findings/Attachments%20to%20Findings/1%20%20Complaint.pdf (last visited Aug. 20, 2025).

[27] *See supra* n.24 at 2 ("[T]he Executive Director explained that staff planned to make a request for information from ALEC that would be more limited than previous requests and would not require ALEC to identify any of its members; an approach that would address one of ALEC's key objections.").

As a result, ALEC was unable to engage in its organizational mission of recruiting and educating legislators in Minnesota for nearly three years. ALEC's Minnesota legislator-members also suffered harm. One of the primary membership benefits for ALEC legislators includes ALEC's expert, non-partisan research analysis of policy matters delivered in the forms of publications and educational briefings, including various annual conferences. In Minnesota, legislator engagement in such briefings and conferences, provided to enhance their knowledge of public policy matters, dwindled. Because the complaint implicated violation of Minnesota lobbying laws, legislators' travel reimbursements for these educational opportunities — a benefit afforded to legislators by most States — also became problematic. As this investigation ensued, so did reputational damage to ALEC, as the various news media outlet reports on these baseless allegations significantly harmed ALEC's operation and reputation, not only in Minnesota, but nationwide.

Almost three years later, and after ALEC submitted three written responses and had three of its publicly identified members testify, the Minnesota Campaign Finance and Public Disclosure Board dismissed

the complaint.[28] The Board concluded that ALEC's activities throughout the United States and Minnesota was not lobbying under Minnesota law.

Through filing meritless complaints, ALEC's ideological opponents coaxed state enforcement agencies into demanding the identities of ALEC's donors and members. Thankfully, due to insubstantial factual and legal evidence, the complaints were dismissed. But still, state enforcement agencies attempted to force ALEC to identify its members — even before those agencies determined that ALEC's activities violated an applicable law. Even if those enforcement bodies had the identities of ALEC's members, that would not help determine any violation of campaign finance or lobbying law. *See AFP*, 594 U.S. at 614. Similarly, any good faith basis to demand ALEC's constitutionally protected information would be rendered dubious because the request originated with ALEC's ideological opponents. *See id.*

State enforcement agencies apply this dragnet approach to an organization's donor and membership list. In *AFP*, California's Attorney General demanded that nonprofit entities produce their unredacted

[28] *See supra* n. 24 at 2-3 and 8.

Form 990, which would reveal their largest donors. *See* 594 U.S. at 614-15. ALEC's ideological opponents used state enforcement agencies to seek ALEC's membership lists before any determination that state statutes at issue applied to ALEC's activity. And in a case now pending before the Supreme Court, the New Jersey Attorney General demanded the identities of all contributors in a consumer protection investigation without identifying even one consumer protection complaint. *First Choice Women's Res. Ctrs., Inc. v. Platkin*, No. 24-781, Pet. for Cert. at 2-3 (U.S. Aug. 28, 2025). As the NAACP trenchantly observed before the Ninth Circuit in *Americans for Prosperity Foundation v. Becerra*, turning over constitutionally protected donor and membership lists to a state enforcement agency is like handing over a loaded gun, one that the enforcement agency can fire at will or fire accidentally, causing maximum First Amendment damage. *See* Brief for the NAACP Legal Defense and Education Fund, Inc. as Amicus Curiae, *Americans for Prosperity Found. v. Becerra*, No. 16-55727, Dkt. 45 (9th Cir. Jan. 27, 2017) at 28; s*ee also* Br. of Amicus Curiae American Legislative Exchange Council at 4-9, *Americans for Prosperity Found. v. Bonta*, Nos. 19-251 & 19-255, (U.S. March 1, 2021) (detailing how Senator Dick

Durbin's efforts at contacting persons he suspected of being members and supporters of ALEC led to $2 million in lost revenue and nearly 400 state legislative members, including Democrat members, departing ALEC).[29] To combat this severely over-broad approach, which poses a significant risk of disclosing constitutionally protected information, organizations like Buckeye Institute and ALEC need an independent federal safety valve.

II. APPLICATION OF EXACTING SCRUTINY TO SCHEDULE B'S INDISCRIMINATE COLLECTION

The district court correctly held that the IRS's Schedule B disclosure requirement must satisfy exacting scrutiny under the First Amendment. That holding faithfully applies *AFP*, 594 U.S. 595, which confirmed that compelled disclosure of associational affiliations to government officials — not merely to the public — triggers heightened constitutional scrutiny. *See Boone Cnty. Republican Party Exec. Comm.*

[29] Accidental disclosures are also a risk. For example, in 2012, the IRS accidentally sent Matthew Meisel, a "known political activist," the National Organization for Marriage's ("NOM") unredacted confidential Form 990 revealing the names and addresses of all of NOM's donors who donated $5,000 or more. Meisel then sent the 990 to NOM's ideological opponent, the Human Rights Campaign which then sent the 990 to the Huffington Post. The Huffington Post then published the confidential donor information. *Nat'l Org. for Marriage*, 24 F. Supp. 3d at 520-21, 524.

v. Wallace, 132 F.4th 406, 428 (6th Cir. 2025) (applying exacting scrutiny per *AFP*). The IRS seeks a dangerous carve-out from this settled doctrine, arguing that its statutory confidentiality protections distinguish Schedule B from the disclosure regime the Supreme Court invalidated in *AFP*. But constitutional protection for associational privacy does not depend on government promises of confidentiality. Such promises have failed repeatedly throughout American history, as the experiences of ALEC's members confirm. The First Amendment prohibits the government from compiling databases of citizens' private associations in the first instance, despite assurances that the information will remain secure.

The Buckeye Institute's brief comprehensively demonstrates that exacting scrutiny applies to Schedule B's donor disclosure requirement and that the government cannot satisfy that standard. ALEC writes not to repeat those legal arguments but to provide evidence, from ALEC's institutional experience and its members' legislative expertise, of why exacting scrutiny's narrow tailoring requirement is essential and why Schedule B fails that test.

A. ALEC's Experience Demonstrates Why Exacting Scrutiny Is Necessary.

AFP requires narrow tailoring because compelled disclosure of associational choices chills First Amendment freedoms even when the government promises confidentiality. 594 U.S. at 618-19. ALEC's experience vindicates that concern. Despite statutory confidentiality provisions, state enforcement agencies repeatedly demanded ALEC disclose its members, using complaints as pretexts to obtain associational information and burden ALEC's speech.

Even though ALEC ultimately prevailed in every investigation, the constitutional harm had already occurred: ALEC diverted substantial resources from its educational mission to legal defense, members faced intimidation and pressure to disassociate, and potential members were deterred from joining.

ALEC's legislator-members understand this dynamic from both sides. As lawmakers, they have participated in drafting disclosure requirements and witnessed how such laws are used and misused in practice. As targets, they have experienced the chilling effect firsthand. Their consistent observation: Statutory confidentiality provisions do not

prevent disclosure requirements from being weaponized for political purposes. Once government compiles associational information into a database, that information becomes a tool for harassment regardless of confidentiality promises.

This institutional knowledge directly supports *AFP*'s narrow tailoring requirement. The Supreme Court recognized that California's promise to keep Schedule B information confidential was insufficient because "disclosure requirements can chill association even if there is no disclosure to the public." *AFP*, 594 U.S. at 616 (internal quotation marks omitted). ALEC's experience confirms that insight: The very existence of government-compiled associational databases enables demands for parallel disclosure, encourages ideologically motivated investigations, and chills membership even when the original database remains confidential.

B. Schedule B's Indiscriminate Collection Cannot Satisfy Narrow Tailoring.

Under *AFP*, the government must show it needs universal, annual collection of donor information rather than more targeted, less intrusive alternatives. 594 U.S. at 611-14. The government cannot make that showing here for the same reason California could not make it in *AFP:*

The IRS does not systematically use Schedule B information and cannot provide concrete examples of its necessity.

ALEC's experience demonstrates why narrow tailoring matters. State enforcement agencies demanded ALEC's membership lists in fifteen states simultaneously — a coordinated harassment campaign that would have been impossible without the existence of disclosure requirements. The agencies did not need this information to investigate specific violations; they sought it to burden ALEC's operations and intimidate its members. This is precisely the abuse that narrow tailoring prevents: government collection of associational information "in the off chance" it might someday prove useful. *AFP*, 594 U.S. at 613.

The IRS's actual practices confirm that Schedule B is not narrowly tailored. As The Buckeye Institute's brief demonstrates, the IRS does not systematically cross-check Schedule B information against individual tax returns, has admitted it does not need Schedule B information for most 501(c) organizations, and could not cite even one concrete example of using Schedule B data to initiate an examination. Brief of Appellee Buckeye Institute at 9-10, 22. This is not narrow

tailoring; it is indiscriminate collection creating the very database of associational affiliations that ALEC's experience shows will be abused.

C. ALEC's Members' Legislative Expertise Confirms Schedule B's Inadequacy.

ALEC's legislator-members bring unique expertise to the narrow tailoring analysis. These legislators have drafted disclosure laws, served on oversight committees, and observed how such requirements operate across all fifty states. Their uniform conclusion: Indiscriminate, universal collection of donor information is not necessary to prevent fraud or ensure tax compliance. Less intrusive alternatives exist and work effectively.

State tax authorities, for example, can and do conduct effective oversight without requiring annual disclosure of all substantial contributors. Many States require disclosure only when a specific investigation identifies a reason to examine donor information — a far less intrusive alternative that accomplishes legitimate regulatory purposes without maintaining permanent databases of citizens' associational choices. The fact that the IRS has exempted churches from Schedule B while supposedly needing the information from other 501c3

organizations confirms that universal collection is not narrowly tailored to the government's interests. *See* Buckeye Br. at 8-9.

ALEC's members have also witnessed alternatives in the campaign finance context. Some States require disclosure of major donors to political committees; others do not. The States without such requirements do not experience higher rates of fraud or corruption — a natural experiment demonstrating that indiscriminate disclosure is unnecessary to achieve legitimate governmental interests.

III. CONFIDENTIALITY PROMISES CANNOT CURE CONSTITUTIONAL DEFECTS.

Statutory confidentiality provisions sound reassuring, but experience—both ALEC's and the IRS's—shows they provide little protection in practice.

A. The IRS's Confidentiality Failures

The IRS's confidentiality protections have failed repeatedly and notoriously. In 2012, the IRS inadvertently disclosed the National Organization for Marriage's ("NOM") confidential Schedule B to a political opponent, who then provided it to the media. *Nat'l Org. for Marriage, Inc. v. United States*, 24 F. Supp. 3d 518, 520-21 (E.D. Va. 2014). The leaked information revealed NOM's major donors, who faced

harassment and retaliation. *See Citizens United v. FEC*, 558 U.S. 310, 482-83 (2010) (Thomas, J., dissenting) (documenting harassment of Proposition 8 donors).

States could require advocacy organizations to disclose membership lists as a condition of business licensing, tax compliance, charitable solicitation registration, or lobbying disclosure. Under rational basis review, all these requirements would survive constitutional challenge. Each involves a facially legitimate interest bearing a rational relationship to disclosure. This would return us to the pre-*NAACP* regime, where States demanded organizational disclosure under administrative pretexts, then used that information to target supporters of disfavored causes. The Supreme Court rejected that regime in *NAACP* not because Alabama lacked a rational basis for its registration statute, but because compelled disclosure of associational information requires heightened justification regardless of government's asserted purpose.

More recently, ProPublica obtained and published confidential tax return information of numerous wealthy Americans, information that could only have come from IRS files. The IRS has yet to adequately

explain these leaks or prosecute those responsible. And during the Obama administration, the IRS systematically targeted conservative organizations for enhanced scrutiny — scrutiny that included unconstitutionally intrusive demands for donor information. *See Z Street v. Koskinen*, 791 F.3d 24 (D.C. Cir. 2015).

These failures are not anomalies. Section 6103's confidentiality provisions contain numerous exceptions permitting disclosure to congressional committees, state tax authorities, other federal agencies, and pursuant to court orders. 26 U.S.C. § 6103(d)-(m). Each exception is a potential avenue for intentional or inadvertent disclosure. And once information leaves IRS control, whether through disclosure to state authorities under § 6103(d) or through congressional inquiry, confidentiality becomes illusory.

B. ALEC's Observations of State-Level Confidentiality Failures.

ALEC has witnessed identical patterns at the state level. State disclosure laws routinely promise confidentiality, yet associational information nonetheless becomes public through inadvertent disclosure, legal process, or intentional leaks. In Minnesota, for example, the Campaign Finance and Public Disclosure Board sought ALEC's member

lists and communications despite statutory confidentiality provisions. Only ALEC's vigorous legal defense prevented that disclosure, but the investigation itself consumed substantial resources and chilled membership.

Maine's investigation of ALEC proceeded for over a year before investigators recommended dismissing the complaint. During that period, ALEC's membership in Maine declined as legislators faced pressure and criticism for their association with ALEC. The confidentiality provisions in Maine's ethics law did not prevent this chilling effect — the investigation itself, with its implicit threat of disclosure, was enough to deter association.

ALEC's legislator-members have observed these patterns across all fifty states. Confidentiality provisions, they report, fail for three reasons: First, information disclosed to government databases inevitably leaks through inadvertent error. Staff members make mistakes; computer systems are hacked; documents are misfiled. Second, statutory confidentiality yields to legal process — court orders, legislative subpoenas, and public records requests. Third, and most insidiously, the mere existence of confidential government databases

invites demands for disclosure under other legal authorities, as ALEC experienced when fifteen states simultaneously investigated complaints demanding ALEC's membership information.

C. Once in Government Databases, Associational Information Is No Longer Private.

The fundamental problem is not inadequate confidentiality provisions but the creation of government databases of associational information at all. Once the government compiles such information, it becomes a target for legal process, a temptation for leaks, and a tool for harassment. *AFP* recognized this danger: "Disclosure requirements can chill association even if there is no disclosure to the public." 594 U.S. at 612 (internal quotation marks omitted). The chilling effect comes from knowing the government possesses associational information and might disclose it, not from actual public disclosure.

ALEC's experience confirms that insight. State enforcement agencies demanded ALEC's member lists precisely because they knew such information existed somewhere — if not in their own files, then in analogous federal databases. The Schedule B requirement thus enables state-level harassment not only through direct disclosure under § 6103(d) but also by creating the expectation that associational

information should be disclosed and is available somewhere in government records.

The Court should not permit the government to compile databases of citizens' associational choices based on promises of confidentiality that repeatedly prove hollow. The First Amendment demands more protection than the hope that this time, unlike all the previous times, the government will keep its promises.

CONCLUSION

The Court should affirm that the relevant standard of review is exacting scrutiny and remand.

November 26, 2025

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/s/ **Theodore M. Cooperstein**

Attorney for **American Legislative Exchange Council**

Dated: **November 26, 2025**

CERTIFICATE OF SERVICE

I certify that on November 26, 2025, I electronically filed this brief with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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