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 AMICI CURIAE CHRISTIANS ENGAGED, THOMAS MORE SOCIETY, NATIONAL LEGAL FOUNDATION IN SUPPORT OF PLAINTIFF-APPELLEE THE BUCKEYE INSTITUTE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Sixth Circuit Rule 26.1, Amici Curiae make the following disclosures:

1. Are any parties a subsidiary or affiliate of a publicly owned corporation?

No.

2. Is there a publicly owned corporation, not a party to the appeal or an amicus, that has a financial interest in the outcome?

No.

Dated: November 26, 2025

/s/ *Philip D. Williamson*
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INTEREST OF AMICI CURIAE

Christians Engaged is a 501(c)(3) religious nonprofit organization with the mission of mobilizing Christians to pray, vote, and engage civically for impactful participation in the public square. After Christians Engaged completed its application for nonprofit recognition, the Internal Revenue Service denied recognition. The IRS invented reasons entirely outside the requirements for nonprofit organization, mischaracterized amicus's religious beliefs as political ideologies, and engaged in both viewpoint and religious discrimination in violation of the First Amendment to the U.S. Constitution. Amicus offers this brief to highlight its experience related to how the IRS has previously ignored its own regulations and the restrictions of the U.S. Constitution, to the detriment of religious nonprofit organizations.

The Thomas More Society is a non-profit, national public-interest law firm dedicated to restoring respect in law for life, family, and religious liberty. The Thomas More Society provides legal services to clients free of charge and often represents individuals who cannot afford a legal defense with their own resources. The Thomas More Society relies entirely on donor support to provide its services. As such, it has a unique

interest in this case to ensure that the IRS cannot force 501(c)(3) nonprofit organizations to disclose donor information without satisfying the rigors of exacting scrutiny.

The National Legal Foundation (NLF) is a public interest law firm dedicated to the defense of First Amendment liberties (including the freedoms of speech, assembly, and religion). The NLF and its donors and supporters, in particular those from Ohio, are vitally concerned with the outcome of this case because of its effect on the privacy and assembly rights of those donors and supporters.

INTRODUCTION

There's a reason President Ronald Reagan's truism, "I'm from the government and I'm here to help," resonates with the American public. It echoes Thomas Paine's observation that "Society in every state is a blessing, but Government, even in its best state is, but a necessary evil; in its worst state, an intolerable one." Thomas Paine, *Common Sense* 3 (Dover Publ'ns 1997) (1776). Consistent with the notions expressed by both Thomas Paine and President Reagan, many Americans are cautious of even the most helpful IRS agent and view the agency as a whole as a necessary, but often intolerable, evil.

Most Americans will concede that one of those "necessary evils" is *some* IRS regulation of religious nonprofits. But where the IRS's regulatory goals conflict with the First Amendment, the IRS must yield—no matter how laudable the IRS might believe its regulations to be. In the experience of amici, the IRS's donor disclosure rules create the opportunity for the governmental abuses (intentional and inadvertent) identified by The Buckeye Institute ("Buckeye"). And for that reason, the IRS's regulations here conflict with the First Amendment. But the IRS is not immune to the restrictions of the First Amendment.

Amicus Christians Engaged became subject to the regulations of the IRS only after its Director of Exempt Organizations unconstitutionally cast doubt upon the legitimacy of its application for nonprofit recognition. Christians Engaged has first-hand experience with the misgivings of Buckeye, and its experience further demonstrates why this court should ensure that the IRS strictly abides by the limits the Constitution places on its intrusion upon religious nonprofits. At stake then, as now, is the ability of religious organizations to freely associate with like-minded Americans without the threat of disclosing to a government agency that purports to be "here to help" when the "help"

offered might only diminish their constitutional right to freely associate—even to do so anonymously.

The question here is straightforward: Is it truly free association if you must report your associations—and associates—to the government? If the answer is no, then the Court should affirm the Constitution and the district court. If the answer is yes, that would represent a devastating sea change for the civic groups, nonprofits, and religious organizations that are the lifeblood of American community life.

ARGUMENT

I. Disclosure of donor information unconstitutionally increases the risk of chilling fundamental liberties.

The U.S. Supreme Court has been careful to balance the interests of agencies fulfilling their governmental mandates with the fundamental liberties of Americans and the organizations they form. When Christians Engaged sought recognition as a 501(c)(3) organization to pursue the expression of its religious mission, the IRS not only balked, it singled out the organization for, at best, cynical treatment.[1]

[1] Letter from Stephan A. Martin, Director, Exempt Organizations, Rulings and Agreements, to Christians Engaged, May 18, 2021, https://firstliberty.org/wp-content/uploads/2021/06/Christians-Engaged-IRS-Determination-Letter_Redacted.pdf.

The IRS viewed Christians Engaged with suspicion, questioning their religious beliefs and mischaracterizing their educational efforts as political operations. Rather than accept Christians Engaged's organizational purpose of "educat[ing] believers on the national issues that are central to [its] belief in the Bible as the inerrant Word of God" and providing myriad resources meant to help Christian Americans navigate the political process, the IRS skewed their stated intent, characterizing it instead as a prohibited political campaign.[2]

Worse, in its letter labeling Christians Engaged's religious bona fides as disqualifying, the IRS would not even deign to use the phrase, "Word of God"—a universally accepted phrase referring to the Christian Bible. Instead, agents bizarrely substituted the letter "M" in its place. Rejecting their educational efforts meant to assist the average churchgoer, the IRS declared that the religious organization engaged in "political campaign intervention" redounding to the benefit of "D," the letter the IRS chose to represent "Republican Party" in its correspondence.[3]

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[2] Christians Engaged, Engage, https://christiansengaged.org/engage (last visited November 20, 2025).
[3] Martin Letter, at pp. 1, 4.

Without pushback from the undersigned counsel, Christians Engaged would not have received the benefits to which they were otherwise entitled as a religious organization.[4] If the IRS is capable of such open rejection of common religious beliefs and practices, then it is likewise capable of the threats and abuses that Buckeye warns about.

Demanding the disclosure of a religious organization's donors "brings with it an additional risk of chill"—the same risk created by openly questioning the organization's religious beliefs or the bona fides of Americans organized for religious purposes. *Americans for Prosperity Found. v. Bonta*, 594 U.S. 595, 618 (2021). Thus, "[n]arrow tailoring is crucial" given the likelihood that "First Amendment activity [will be] chilled—even if indirectly . . .." *Id*. at 433. While the IRS may promise to keep private the private information of donors, the Court should not merely accept the IRS's word. For one thing, the Constitution does not permit blind belief in the IRS's promises. Instead, Courts must carefully consider "the potential for First Amendment harms before requiring that organizations reveal sensitive information about their members and

[4] Letter from Lea Patterson, Counsel, to Internal Revenue Service, June 16, 2021, https://firstliberty.org/wp-content/uploads/2021/06/Christians-Engaged-Appeal-Letter-Final2_Redacted.pdf.

supporters." *Id.* at 609. "The point is that a reasonable assessment of the burdens imposed by disclosure should begin with an understanding of the extent to which the burdens are unnecessary, and that requires narrow tailoring." *Id.* at 611.

Anything less than narrow tailoring increases the likelihood that religious organizations that are otherwise qualified for 501(c)(3) status will find their fundamental rights and liberties unconstitutionally chilled.

II. Donor confidentiality is key to associational rights and religious liberty.

The First Amendment guarantee against "prohibiting the free exercise" of religion would mean precious little if that guarantee did not extend from the person to an association of like-minded persons joined together "peaceably" for a common purpose. U.S. Const. amend. I. If the rights of religious exercise and assembly failed to guard against the intrusive eyes of government, ink on parchment would be all that was left. Indeed, the "text and history of the Assembly Clause suggest that the right to assemble includes the right to associate anonymously." *Bonta*, 594 U.S. at 619–20 (Thomas, J., concurring in part and concurring in the judgment).

The U.S. Supreme Court has long warned that government action, "even though unintended," might "inevitably" intrude upon the "indispensable liberties" of Americans. *NAACP v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 461 (1958). Government action, therefore, is not given the assumption of beneficence. Rather, courts must view with a weather eye even the most "necessary" government action when that action encroaches on the liberties and peaceable assembly of Americans.

When groups of Americans gather for the purpose of advocacy—whether political, educational, religious, or otherwise—compelling the "disclosure of affiliation . . . may constitute as effective a restraint on freedom of association . . .." *Id.* at 462. Where such risks arise, the Supreme Court "has recognized the vital relationship between freedom to associate and privacy in one's associations" and ordered its protection, even at the expense of compelling reasons advanced by government. *Id.* at 462. Why? Because "[i]nviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Id.*

So too here. Not only would the intentional or accidental disclosure of donor information chill indispensable liberties like religious liberty, it

would "dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure." *Id.* at 462–63. Thus, as in the context of producing the records at issue in *NAACP*, this Court should "hold that the immunity from state scrutiny of" donor information that the Buckeye "claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment." *Id.* at 466. Just as Alabama fell "short of showing a controlling justification for the deterrent effect on the free enjoyment of the right to associate which disclosure of membership lists," *id.*, so too must the IRS in the instant action.

That one is membership lists and another donor information matters little. Both demands compel an organization to disclose at least some of its associates to the government. The only difference (perhaps) is the depth of involvement—and even then, only as represented by money (as opposed to investments of time and talent). Suffice it to say, the right to free association—and the anonymity that protects that right—does not turn on *how much* one associates with an organization. At heart, the

Supreme Court intends to shield from all but the most controlling justifications by government the private lives of Americans. "Government actions that may unconstitutionally infringe upon this freedom can take a number of forms." *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622–23 (1984) (giving examples from disfavored groups in *Healy v. James*, 408 U.S. 169, 180–184 (1972); disclosure in cases of seeking anonymity as in *Brown v. Socialist Workers '74 Campaign Committee*, 459 U.S. 87, 91–92 (1982); and interfering with the internal organization or affairs of the group as in *Cousins v. Wigoda*, 419 U.S. 477, 487–488 (1975)).

The importance of protecting the privacy of individual donors and, more generally, the right of assembly is important because an "individual's freedom to speak, to worship, and to petition the government for the redress of grievances could not be vigorously protected from interference by the State unless a correlative freedom to engage in group effort toward those ends were not also guaranteed." *Roberts*, 468 U.S. at 622.

And it is no answer for the IRS to simply brush off demands by promising that the IRS alone will review the private information of

donors and keep that private information out of public view. There is little reason to think that could even be done, as Buckeye capably demonstrates.[5] But even if the IRS could really guarantee that private information would remain private—and even if the risk of public disclosure were nil—"disclosure requirements can chill association." *Shelton v. Tucker*, 364 U.S. 479, 486 (1960).

Such a concept is hardly a constitutional orphan. The Supreme Court has invalidated licensing requirements to distribute literature where the government action was overly broad in light of the governmental aims. *See Lovell v. Griffin*, 303 U.S. 444 (1938). In *Schneider v. State*, 308 U.S. 147 (1939), the Court invalidated ordinances imposing a prior restraint on fundamental personal liberties out of a concern for democratic institutions themselves. Similarly, in *Cantwell v. Connecticut*, 310 U.S. 296 (1940), the Court restrained the regulatory power of government, even for permissible ends, if the means infringed upon protected freedoms.

The IRS requests to view and retain the private information of donors exercising multiple First Amendment freedoms, and the IRS

[5] Motion for Summary Judgment, R. 36, PageID #171-174.

promises not to leak that information (except occasionally). The Court must view that request skeptically "in the light of less drastic means for achieving the same basic purpose." *Shelton*, 364 U.S. at 488. Whatever the stated purpose of retaining the private donor information of 501(c)(3) organizations by the IRS, "that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved." *Id.*

III. The IRS has given reason for religious organizations to be skeptical of its regulatory purposes.

While the IRS was given the American trust by legislative direction and executive oversight, Americans have good reason to be skeptical of the IRS's claims here that they can be trusted to safeguard the private donor information of 501(c)(3) organizations.

As the story of Christians Engaged demonstrates, agents of the IRS can sometimes tilt against religious institutions. Denying tax-exempt status for Christians Engaged while recognizing the exempt status of other organizations who encourage civic engagement from different viewpoints demonstrates that, at least occasionally, the IRS has engaged in impermissible viewpoint discrimination. This Court should therefore be cautious about what private data it mandates be entrusted to the IRS.

The experience of Christians Engaged is far from unique, as this Court is well aware. In 2012, the IRS, under then-Commissioner Lois Lerner, targeted conservative nonprofit organizations for additional scrutiny not placed on organizations on the opposite end of the political spectrum.[6] *See In re U.S.*, 817 F.3d 953, 956-958 (6th Cir. 2016). Lerner admitted in 2013 that key terms reflective of conversative politics were caught by a low-level IRS agent, flagging their applications for additional scrutiny by the agency.[7] Not only did the IRS Commissioner publicly apologize, but the government also settled at least two separate lawsuits over the controversy for an undisclosed amount.[8]

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[6] U.S. House of Representatives, Committee on Oversight and Government Reform, Staff Report, "Lois Lerner's Involvement in the IRS Targeting of Tax-Exempt Organizations," (113th Congress), March 11, 2014. Available https://oversight.house.gov/wp-content/uploads/2014/03/Lerner-Report1.pdf (Accessed November 20, 2025).

[7] Mark Murray, "IRS apologizes for targeting conservative groups," NBC News, May 10, 2013, https://www.nbcnews.com/news/world/irs-apologizes-targeting-conservative-groups-flna1c9873823.

[8] Brendan O'Brien and Chizu Nomiyama, "Justice Department settles with conservative groups over IRS Scrutiny," REUTERS, October 26, 2017, https://www.reuters.com/article/legal/justice-department-settles-with-conservative-groups-over-irs-scrutiny-idUSKBN1CV1TX/.

If chilling religious speech by the IRS counts for anything—and it should—the so-called "Johnson Amendment" of the Internal Revenue Code has put pastors and churches on ice for over 70-years. Recently, the IRS opened an investigation of Grace Church St. Louis for possible violations of the Johnson Amendment.[9] The IRS purportedly launched its investigation into the educational efforts of the church because it reviewed an editorial written in the local newspaper.[10] Its letter noticing the church of its investigation inquired heavily into the associational rights of those who attended its services and engaged within its community.[11]

Similarly, New Way Church received notice of investigation by the IRS after it prayed for a candidate for the local school board visiting its

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[9] Letter of Edward T. Killen, Commissioner, Tax Exempt Government Entities Division, to Grace Church Saint Louis, April 30, 2024, https://firstliberty.org/wp-content/uploads/2025/05/24-04-30-IRS-to-Grace-Church.pdf.

[10] "Editorial: Maryland Heights church deserves to have its tax-exempt status suspended," St. Louis Post-Dispatch, March 9, 2022, https://www.stltoday.com/opinion/editorial/editorial-maryland-heights-church-deserves-to-have-its-tax-exempt-status-suspended/article_d7170209-27fd-5683-b041-594f6e3cc84f.html?&ms=GT24X.

[11] Killen Letter to Grace Church, at 1.

church during its regular services.[12] The investigatory letter admitted that the IRS had snooped around its website and social media channels to identify attendees at the church's worship services, inviting the church to incriminate itself in a violation of the Johnson Amendment.[13] Additional questions posed by the IRS to New Way called into question the church's qualification for tax-exempt status.[14]

In short, Buckeye, like the average American, has reason to distrust the promises of the IRS that it will safeguard private donor information from public view and will not use it for unlawful purposes. Or, as the Supreme Court recently put it, "[t]he upshot is that [the IRS] casts a dragnet for sensitive donor information," *Bonta*, 594 U.S. at 614 (2021), to use for purposes that amount to little more than an agent knocking at the door of the Buckeye and announcing, "Trust me. I'm from the government and I'm here to help."

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[12] Letter of Edward T. Killen, Commissioner, Tax Exempt Government Entities Division, to New Way Christian Fellowship, June 14, 2024, https://firstliberty.org/wp-content/uploads/2025/04/24-06-14-IRS-ltr-to-Summerlin.pdf.

[13] *Id.*

[14] *Id.*

CONCLUSION

For the forgoing reasons, the Court should affirm the district court's order applying exacting scrutiny and remand the matter to the district court for further proceedings.

Dated: November 26, 2025

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word limit of Federal Rule of Appellate Procedure 29(a)(5) because it contains 2,828 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6 Cir. R. 32(b).

This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface in 14-point Century Schoolbook font.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing corrected brief was filed electronically on November 26, 2025 using the Court's CM/ECF system, which will serve notice of this filing on all counsel of record.

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