No. 25-3170

IN THE 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; and SCOTT BESSENT, in his official capacity as Secretary of the Treasury,

Defendants-Appellants.

On Appeal
From the United States District Court for the
Southern District of Ohio at Columbus
Case No. 2:22-cv-4297
The Honorable Michael H. Watson

BRIEF OF *AMICI CURIAE* PHILANTHROPY ROUNDTABLE, PEOPLE UNITED FOR PRIVACY FOUNDATION, MANHATTAN INSTITUTE, AND KANSAS JUSTICE INSTITUTE IN SUPPORT OF APPELLEE

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CORPORATE AFFILIATE/FINANCIAL INTEREST STATEMENT

Pursuant to 6 Cir. R. 26.1, *amici curiae* make the following disclosures:

1. No *amicus curiae* is a subsidiary or affiliate of a publicly owned corporation or issues any stock.
2. No *amicus curiae* is aligned with any publicly owned corporation that has a substantial financial interest in the outcome of this litigation.

November 26, 2025

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

Amici are all nonprofit organizations that share interests in protecting the rights of their donors to associate freely in support of shared values and without fear of harassment or retaliation. *Amici* agree that the IRS's compelled disclosure of substantial contributors is a government action that must be held to an appropriately high standard—exacting scrutiny—before the government may take steps likely to chill speech. *Amici* are:

- Philanthropy Roundtable, a nonprofit 501(c)(3) organization that advocates for all Americans to have philanthropic freedom—that is, freedom to give to the causes and communities they care most about without fear of reprisal.
- People United for Privacy Foundation (PUFPF), a nonprofit, nonpartisan 501(c)(3) organization that advocates for the right of individual Americans to come together in support of shared values and that provides information and resources to policymakers, media, and the public about the close and necessary relationship between citizen privacy and the freedoms of speech and association. Pursuant to that interest, PUFPF submits comments on proposed legislation and

[1] Pursuant to FRAP 29(a)(4)(E), *amici curiae* state that no party's counsel authored the brief in any part and that no person—other than *amici*, their members, or their counsel—contributed money that was intended to fund preparing or submitting this brief. Further, all parties consent to the filing of this brief.

amicus briefs in cases concerning any government action that threatens to chill nonprofit advocacy by unlawfully unmasking organizations' members and financial supporters.

- Manhattan Institute, a nonprofit 501(c)(3) organization that brings together scholars, journalists, activists, and civic leaders to enrich public discourse, provide policy expertise at every level of government, and develop civic leaders.
- Kansas Justice Institute (KJI), a pro bono, public interest litigation firm committed to upholding constitutional freedoms, protecting individual liberty, and defending against government overreach and abuse by litigating in state and federal courts, filing *amicus* briefs, and commenting on matters of public concern. KJI is a Kansas limited liability company whose sole member is Kansas Policy Institute, a nonprofit, nonpartisan public policy 501(c)(3) organization.

SUMMARY OF THE ARGUMENT

Whatever the Internal Revenue Service's motivations, warehousing the identities of every significant donor to American charities is undeniably dangerous. The courts have long understood that "compelled disclosure" of this kind "can seriously infringe on privacy of association and belief guaranteed by the First Amendment." *Buckley v. Valeo,* 424 U.S. 1, 64 (1976) (per curiam) (citing *NAACP v. Button*, 371 U.S. 415 (1963)). And if that was true half a century ago, when government files were kept on paper behind closed doors, it has only become more pressing

as demands have proliferated and sensitive information has been digitized and stored on widely dispersed servers.

Chill of protected speech and association is the inevitable result. Recognizing that core truth, a controlling plurality of the Supreme Court four years ago flatly declared that "First Amendment challenges to compelled disclosure" of donor information are subject to "exacting scrutiny." *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (plurality op.) (*AFPF*).[2] In reviewing California's "dragnet for sensitive donor information," *id.* at 614, the Court clarified that exacting scrutiny requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes." *Id.* at 611 (quotation marks and internal citations omitted).

As the district court recognized, that decision controls this case. Exacting scrutiny is the appropriate standard whenever the government demands to know the identities of a group's donors—for good reason. As the Supreme Court acknowledged in *AFPF,* the "exacting scrutiny" standard arises from the *NAACP* line of civil rights precedents. 594 U.S. at 607. There, segregationist states applied laws within the "traditional purview of state regulation[,]" *Button*, 371 U.S. at 438, to demand donor

[2] Justice Thomas would have gone further and applied strict scrutiny. 594 U.S. at 619 (Thomas, J., concurring in the judgment). Justices Alito and Gorsuch agreed that at least exacting scrutiny applied in compelled disclosure cases.

information from a disfavored organization and, ultimately, to drive it from the public arena.

Failure to apply exacting scrutiny harms First Amendment interests in two ways. First, as this history shows, governments may hide their targeting of disfavored groups behind facially neutral laws and procedural gamesmanship. Only the prompt and rigorous application of constitutional scrutiny can prevent that abuse and the resulting chill to civil society. Second, exacting scrutiny is necessary to ensure the burden of persuasion falls upon the government whenever it breaches citizens' "privacy of association and belief." *Buckley,* 424 U.S. at 64.

In sum, exacting scrutiny strikes a balance whereby citizens' freedom of speech and association are protected while governments can obtain donor information with an appropriate showing of need. That standard should apply here.

ARGUMENT

I. To Chill First Amendment Rights Is to Violate Them

The Supreme Court has repeatedly explained that burdens on First Amendment liberties trigger judicial scrutiny with real teeth.

Federal law recognizes this in multiple contexts. For instance, under Article III, the loss of First Amendment rights is a harm "specified by the Constitution itself." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 425 (2021). Accordingly, the Court has long held that "[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably

constitutes irreparable injury." *Roman Cath. Diocese of Brooklyn v. Cuomo*, 592 U.S. 14, 19 (2020) (per curiam) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality op.)).

Similarly, the chill that stems from interpreting vague regulations burdens First Amendment rights. *Brown v. City of Albion, Mich.*, 136 F.4th 331, 344 (6th Cir. 2025) (vague laws "may chill" and thereby "offend the First Amendment"). When governments pass vague laws—or enforce them in unpredictable ways—reasonable people steer clear of the line. The Supreme Court has recognized that this dynamic deters the exercise of First Amendment rights, *see Buckley*, 424 U.S. at 76–77, and thus imposes the "harm" of "self-censorship," *see Virginia v. Am. Booksellers Ass'n, Inc.*, 484 U.S. 383, 393 (1988); accord *Fischer v. Thomas*, 52 F.4th 303, 307 (6th Cir. 2022) (government action "chills speech" when political candidates "self-censor[] because [of] vague threats" from a government actor).

What is true for speech is also true for association. "First Amendment freedoms need breathing space to survive," *Button*, 371 U.S. at 433, and private association provides the "breathing space" that permits "effective advocacy." *Buckley,* 424 U.S. at 65 (quoting *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449, 460 (1958) ("*Patterson I*")). "[C]ompelled disclosure" imposes an unacceptable "risk of a chilling effect on association," *AFPF*, 594 U.S. at 618–19, which is why "privacy of association and belief" is *itself* a core constitutional liberty "guaranteed

by the First Amendment[,]" *Buckley*, 424 U.S. at 64 (*citing Gibson v. Florida Legislative Committee*, 372 U.S. 539 (1963)).

Following this logic, a controlling plurality of the Supreme Court has concluded that "First Amendment challenges to compelled disclosure" of donor information are subject to "exacting scrutiny." *AFPF*, 594 U.S. at 607 (plurality op.). In reviewing California's "dragnet for sensitive donor information," *id.* at 614, the Court clarified that exacting scrutiny requires "a substantial relation between the disclosure requirement and a sufficiently important governmental interest, and that the disclosure requirement be narrowly tailored to the interest it promotes[,]" *id.* at 611 (quotation marks and internal citations omitted). Further, the plurality clarified that the rigors of exacting scrutiny are necessary because of the "deterrent effect" on First Amendment liberties "that arises as an inevitable result of the government's conduct in requiring disclosure." *Id.* at 607 (quoting *Buckley*, 424 U.S. at 65).

Exacting scrutiny strikes a balance, providing strong First Amendment protections while permitting the government to meet its constitutional burden with a sufficient showing of need. *See, e.g.*, *Burson v. Freeman,* 504 U.S. 191, 198 (1992) (plurality op.). But by placing that burden on the government at the outset, exacting scrutiny guards against unnecessary risk to underlying liberties—risk that is, itself, "enough" to trigger the First Amendment's protections. *AFPF*, 594 U.S. at 618–19.

The district court correctly recognized that it was required to apply exacting scrutiny. That decision complied with the Supreme Court's recent instructions, themselves based on hard-won lessons from the civil rights era.

II. The Need for Exacting Scrutiny Is a Hard Lesson Learned from the *NAACP* Line of Associational Liberty Cases

History shows why exacting constitutional scrutiny should be imposed at the initiation of a First Amendment challenge. That lesson comes from the very cases that created the exacting scrutiny standard in the first place. In a morass of litigation involving Alabama's segregationist government, the Supreme Court faced repeated efforts to forestall First Amendment scrutiny of Alabama's demand for the NAACP's membership list. Because of procedural gamesmanship and delay, the NAACP was unable to operate in Alabama for the better part of a decade. Requiring the government to bear its burden under exacting scrutiny whenever it demands donor or membership information would have prevented that extraordinary damage to the NAACP's speech and associational rights.

A. Alabama's scheme to discover and intimidate NAACP's donors—and its segregationist neighbors' similar schemes—relied upon the abuse of seemingly unremarkable and longstanding state laws.

The *NAACP* cases involved segregationist governments' systematic abuse of facially neutral economic regulations. Nevertheless, because

these laws included membership disclosure requirements, they were ripe for weaponization against disfavored organizations.

In the most prominent of these cases, *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958), John Patterson, the case's eponymous Alabama Attorney General, decried the NAACP as a disruptive "outside force" due to its civil rights work in the state. Edwin Strickland, "Temporary Writ Is Issued Against NAACP in Alabama," Birmingham News, June 1, 1956. In a carefully choreographed attack, he obtained an *ex parte* temporary restraining order prohibiting the NAACP "from further doing business in the State." Helen J. Knowles-Gardner, *The First Amendment to the Constitution, Associational Freedom, and the Future of the Country: Alabama's Direct Attack on the Existence of the NAACP*, 48 Seattle U. L. Rev. 1, 17 (2024). The supposed basis for the TRO was the NAACP's violation of Alabama's foreign corporation registration statute, a facially neutral (indeed, unremarkable) law that required foreign organizations to "fil[e their] corporate charter with the Secretary of State and designat[e] a place of business and an agent to receive service of process." The law also "impose[d] a fine on a corporation transacting intrastate business before qualifying and provide[d] for criminal prosecution of officers of such a corporation." *Patterson*, 357 U.S. at 451 (citing Ala. Code, 1940, Tit. 10, §§ 192-198). When the NAACP refused Patterson's supervisory demand for its membership list, the court issued a contempt order and fined it $100,000. 357 U.S. at 454.

Everyone knew the foreign registration justification was bunk. Plainly, "the litigation was designed and intended to put the NAACP out of business." Knowles-Gardner, *Alabama's Direct Attack on the Existence of the NAACP*, *supra*, at 2. The participants understood the true nature of the litigation. Its principal actors, after all, were Attorney General Patterson—whose gubernatorial aspirations relied upon segregationist politics—and Walter B. Jones, the politically-active judge who issued the contempt order. *See id.* at 31–32 (noting that Patterson's gubernatorial campaign referenced his anti-NAACP actions); *id.* at 34–39 (quoting Jones's column "I Speak for the White Race" in which the judge criticized the NAACP's civil rights campaign on straightforwardly racist grounds).

Similar stories played out across the South. In Louisiana, the NAACP again faced a demand for the names and addresses of its members under a facially neutral statute. In response, the Supreme Court, in a preliminary posture, cautioned that "sophisticated" regulatory measures must not be "employed" by state governments "to stifle, penalize, or curb the exercise of First Amendment rights." *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 297 (1961).

Likewise, in *Shelton v. Tucker*, the Court invalidated an Arkansas compelled disclosure law that required public school teachers to list their private associations and financial contributions as a condition of employment. 364 U.S. 479 (1960). The law, predictably, chilled instructors who

belonged to disfavored groups from seeking public employment as teachers. The Supreme Court accepted the state's interest in investigating "the fitness and competency of its teachers," but nevertheless held that the sweeping regulation was a "comprehensive interference with associational freedom" that extended "far beyond what might be justified." *Id.* at 490. Similarly, in *Button*, the NAACP faced a Virginia anti-solicitation law intended to stifle NAACP attorneys from challenging school segregation. 371 U.S. at 424–25 (recounting the Virginia legislature's 1956 expansion of the anti-solicitation law, which a state court applied to the NAACP's activities). Although the law did not target the NAACP on its face, the Supreme Court was not fooled, finding that the new rules created "the gravest danger of smothering all discussion looking to the eventual institution of litigation on behalf of the rights of members of an unpopular minority." *Id.* at 434.

Finally, Little Rock weaponized its occupational licensing tax ordinance, passing an amendment that required nonprofit associations like the NAACP to file financial statements listing the names and addresses of their members. The Supreme Court saw through the ruse, including the lack of connection between the disclosure requirement and the city's taxing power, and invalidated this "more subtle government interference" with protected association. *Bates v. Little Rock*, 361 U.S. 516, 525 (1960).

Each of these cases involved laws falling within "the traditional purview of state regulation." *Button*, 371 U.S. at 438. In each instance, segregationist governments used facially valid laws to "subtl[y]" stifle core First Amendment activity. *Bates*, 361 U.S. at 523. And in each case, the states relied upon a plausible demand for the NAACP's membership information. In response, the Supreme Court had to look beyond appearances and subtle distinctions, recognize the chill these efforts plainly created for real people, and impose exacting constitutional scrutiny. Looking "behind" a facially neutral law is a hallmark of exacting scrutiny. Where courts failed to hold governments to a heightened burden beyond pointing to facially legitimate laws and regulations, the result was concrete and substantial harm.

B. Because the courts did not impose exacting scrutiny at the initiation of Alabama's scheme, the NAACP was excluded from that state for nearly a decade.

Despite the Supreme Court's intervention, Alabama's scheming against the NAACP *succeeded* for a shockingly long period. Through intransigence and avoidance of merits determinations, Alabama successfully excluded the NAACP for six years after its loss in *Patterson*. All told, the June 1956 TRO barring the NAACP from operating in Alabama was in place for eight years—despite four trips to the Supreme Court! *See* Helen J. Knowles-Gardner, *Anthony Lewis Takes Us Inside the Oral Arguments in* NAACP v. Alabama ex rel. Flowers *(1964)*, 49 J. Sup. Ct. History 213, 233 (2024).

In the oft-cited *Patterson I*, the Supreme Court found that requiring the NAACP to disclose its members violated the First Amendment. 357 U.S. at 466–67. The decision was memorable. The Court unanimously held that Alabama's stated goal of evaluating the character and extent of the NAACP's activities in Alabama did not require the compelled disclosure of its membership list. *Id.* at 464. Accordingly, the disclosure demand—and the accompanying contempt order—could not survive the "closest scrutiny" warranted by Alabama's assault on the NAACP's First Amendment rights. *Id.* at 461. The Court emphasized that "[i]t is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as" more "direct action to restrict the right of . . . members to associate freely." *Id.* at 462–63. The result: Alabama did not have the requisite tailored interests to get its hands on the NAACP's membership list. Likewise clear was the Court's disposition: "the judgment of civil contempt and the $ 100,000 fine which resulted from [the NAACP's] refusal to comply with the production order… must fall." *Id.* at 466.

But that was not the end of the story. On remand, the Alabama Supreme Court upheld the same contempt judgment on other grounds. The Supreme Court reversed again, criticizing Patterson for his shifting rationales for the illegal order. *NAACP v. Alabama ex rel. Patterson*, 360 U.S. 240, 243 (1959) ("*Patterson II*").

The Court sent the case back, with the TRO now having lasted a less-than-temporary three years. On remand, though, the NAACP faced constant procedural delays and never reached the merits. Knowles-Gardner, Inside the Oral Arguments, supra, at 227. Again appealing to the federal Supreme Court for relief, the NAACP won a per curiam order that Alabama's courts proceed to the merits by January 2, 1962. *NAACP v. Gallion*, 368 U.S. 16, 16 (1961).

Finally reaching the merits, the Alabama trial court ruled, despite evidence to the contrary, that the NAACP had illegally operated in Alabama and issued a permanent injunction. Knowles-Gardner, Inside the Oral Arguments, *supra*, at 227. The Alabama Supreme Court affirmed "wholly on procedural grounds," undoubtedly, though futilely, to escape federal review. *NAACP v. Alabama ex rel. Flowers*, 377 U.S. 288, 292–93 (1964).

The Supreme Court reversed yet again, after oral argument where the justices castigated "the Alabama court's obstructionist tactics." Knowles-Gardner, Inside the Oral Arguments, *supra*, at 229–30. The resulting opinion again criticized Alabama's procedural gamesmanship. 377 U.S. at 297 (observing that the "Alabama courts" had "applied their rules" of procedure with a double standard in an attempt to "thwart[]" the "constitutional rights" of the NAACP). The NAACP finally reentered Alabama on October 31, 1964, but the damage was done. Knowles-Gardner, Inside the Oral Arguments, supra, at 233. The organization had been

successfully excluded for eight long years at the height of the struggle for civil rights in the South.

Beginning in *Patterson I,* the Court explained that the First Amendment protects against compelling disclosure that may chill associational rights. But, as this history shows, that rule can only be effective when Constitutional protections bar unconstitutional government demands from the beginning. While the government must be able to defend valid laws when it can show a narrowly tailored need for regulation, the protections of the First Amendment are illusory if they cannot prevent chill to protected speech and association in practice.

III. Exacting Scrutiny Is the Standard in Compelled Disclosure Cases

AFPF v. Bonta, recognizing these lessons, acknowledged the inherent chill to associational liberties whenever the government demands to know who is supporting an organization. This is common sense. Once that information is warehoused by the state, no donor can ever be entirely confident that a hostile government or malevolent individual will not seek to use it.

A. The threshold burden is on the government.

The primary way to safeguard associational liberty is to ensure that exacting scrutiny places the burden of justification on the government, not on plaintiffs. Courts sometimes treat exacting scrutiny as a sliding scale whereby those subject to a demand for donor or membership lists must explain why complying will chill their particular associational

rights. *See, e.g.*, *No on E v. Chiu*, 85 F.4th 493, 509 (9th Cir. 2023), *cert. denied sub nom. No on E, San Franciscans v. Chiu*, 145 S. Ct. 136 (2024) (associational plaintiffs must show that compelled disclosures "actually and meaningfully deter contributors.") (citing *Family PAC v. McKenna*, 685 F.3d 800, 807 (9th Cir. 2012)). This approach improperly shifts the burden of persuasion away from the government. By its very nature, requiring organizations to demonstrate specific risk to their donors, rather than forcing the government to carry its burden, will chill civic participation. After all, no donor can predict the future, and a favored group today may be a dissident tomorrow.

Another reason the government must demonstrate its need *ab initio* is that it *is* the government. In addition to the risk of accidental or intentional disclosure to the public,[3] there is the risk of targeted governmental

[3] *See, e.g.*, Jesse Eisinger, Jeff Ernsthausen, and Paul Kiel, *The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax*, ProPublica (June 8, 2021) (available at https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax) ("ProPublica has obtained a vast trove of Internal Revenue Service data on the tax returns of thousands of the nation's wealthiest people, covering more than 15 years."); *accord AFPF v. Bonta*, 594 U.S. 595, 604 (2021) ("the Foundation identified nearly 2,000 confidential Schedule Bs that had been inadvertently posted to the Attorney General's website, including dozens that were found the day before trial. One of the Foundation's expert witnesses also discovered that he was able to access hundreds of thousands of confidential documents on the website simply by changing a digit in the URL.").

action behind closed doors. This is no ephemeral fear. The IRS infamously apologized in 2017 for targeting 40 tax exempt organizations for worse treatment because of their political viewpoints.[4]

Similarly, the government's demands for private associational information are backed by the coercive power of the state—and therefore always chilling. The IRS and its *amicus* NYU Law Tax Center attempt to frame the government's demand for Schedule B as nothing more than the benign encouragement of voluntary compliance. Doc. 17 at 48 (IRS Br.); Doc. 21 at 10-11 (NYU Law Tax Center Br.). Not so. There are no kind, gentle government demands, and the Schedule B disclosure requirement is no exception.

Moreover, *AFPF* itself places the burden of persuasion on the government. The dissenters in that case explained that "the Court abandon[ed] the requirement that plaintiffs demonstrate that they are chilled" and castigated the majority for "presum[ing]… that all disclosure requirements impose associational burdens." *Id.* at 629 (Sotomayor, J., dissenting). Just so. While this Court has not always been clear on this point, *AFPF* requires the application of exacting scrutiny *against the government* in all cases where it demands donor information. *Compare Lichtenstein v. Hargett*, 83 F.4th 575, 603 (6th Cir. 2023) (citing *Miller v. City*

[4] Peter Overby, *IRS Apologizes For Aggressive Scrutiny Of Conservative Groups*, NPR (Oct. 27, 2017) (available at https://www.npr.org/2017/10/27/560308997/irs-apologizes-for-aggressive-scrutiny-of-conservative-groups).

of Cincinnati, 622 F.3d 524, 538 (6th Cir. 2010)) (suggesting association plaintiffs must show compelled disclosure "'directly or indirectly' affects their 'group membership' in a way that undermines their message"). This appeal is an important opportunity to clarify that rule.

B. Compelled disclosure is itself a constitutional injury that triggers exacting scrutiny.

In *AFPF*, six Supreme Court justices agreed that at least exacting scrutiny applies in all compelled disclosure cases. Because the plurality's "narrowest" approach renders it controlling under *Marks v. United States*, 430 U.S. 188 (1977), that is the standard here. *See* 594 U.S. at 623 (Alito, J., concurring and concurring in the judgment) (noting a "choice … between exacting and strict scrutiny"; *id.* at 620 (Thomas, J., concurring and concurring in the judgment) (advocating strict scrutiny).

Regan v. Taxation with Representation, 461 U.S. 540 (1983)—and *AFPF*'s citation to *Regan*—is not to the contrary. That 1983 decision may provide arguments *under exacting scrutiny*, but it cannot supply a standalone rule of decision that ousts *AFPF*'s categorical rule. While the *AFPF* majority cited *Regan* for the prospect that "revenue collection efforts and conferral of tax-exempt status may raise issues not presented by California's disclosure requirement," it did so when *applying* exacting scrutiny, not when discussing *whether* exacting scrutiny applied. *See AFPF*, 594 U.S. at 618 (discussing *Regan* in Part III of the opinion). Part II of the opinion, which explains the standard of review, relied upon the

NAACP cases, not *Regan* (which was not even cited in that section of the opinion). *See id.* at 607–611. In other words, *AFPF* mentioned *Regan* to explain that the Court was not deciding precisely how exacting scrutiny would apply in every compelled disclosure case, even though that would *be* the standard in such cases.

In any event, *Regan* itself stands for the modest proposition that a "refusal to fund protected activity, *without more*, cannot be equated with the imposition of a 'penalty' on that activity." *Rust v. Sullivan*, 500 U.S. 173, 193 (1991) (quoting *Harris v. McRae*, 448 U.S. 297, 317 n.19 (1980) and citing *Regan*, 461 U.S. at 549, for the same point) (emphasis added). Compelled disclosure is something "more," which is why such cases fall outside *Regan's* ambit.

Moreover, the Supreme Court has long recognized the "fundamental divide" between "abridging speech and funding it." *National Endowment for Arts v. Finley*, 524 U.S. 569, 599 (Scalia, J., concurring in judgment); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205, 214 (2013) (contrasting *Regan* with decisions on unconstitutional conditions). It is thus no surprise that the High Court has applied higher levels of scrutiny to government subsidy programs when they substantially burden First Amendment rights. It did just that in *Arizona Free Enter. Club's Freedom Club PAC v. Bennett*, rejecting the dissenting view—apparently adopted by the IRS here—that "subsidies, by definition and contra the [Supreme Court] majority, do not restrict any speech." *Compare*

564 U.S. 721, 765 (2011) (Kagan, J., dissenting) (citing *Regan*) *with* 754–55 (majority opinion). It may be that a refusal to fund protected activity, without more, triggers only rational basis scrutiny, but when governments substantially burden associational freedoms through compelled disclosure, they must face exacting scrutiny.

CONCLUSION

Clear Supreme Court precedent, itself recognizing core lessons from the civil rights movement, compels the application of exacting scrutiny whenever the government demands the names of a private organization's members or donors. The Court should affirm.

Dated: November 26, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitations of Federal Rules of Appellate Procedure 29(a)(5) and 32(a)(7)(B) because this brief contains 4,227 words, excluding the parts of the brief exempted by the Rules.

This brief complies with the typeface requirement of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Century font.

Dated: November 26, 2025

/s/ *Allen J. Dickerson*
Allen J. Dickerson

CERTIFICATE OF SERVICE

I hereby certify that on November 26, 2025, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Sixth Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

Dated: November 26, 2025

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