



INSTITUTE FOR FREE SPEECH

May 11, 2026

Hon. Kelly L. Stephens, Clerk
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, Ohio 45202

Re: Rule 28(j) supplemental citation of authority for *The Buckeye Institute v. IRS*, No. 25-3170

Dear Ms. Stephens:

The Supreme Court recently addressed an issue raised during oral argument in this case: the broad applicability of exacting scrutiny to demands for donor information. See *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, No. 24-781, 2026 U.S. LEXIS 1949 (Apr. 29, 2026).

The Buckeye Institute argues that the government must “demonstrate its need for universal production [of Schedule Bs] in light of any less intrusive alternatives.” Buckeye Br. at 58 (quoting *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 613 (2021)). *Bonta* requires the Court to scrutinize the government’s policy choices in light of “the record before the District Court.” *Id.* at 55–56 (quoting *Bonta*, 594 U.S. at 613). But the Court cannot do that here because the government brought an interlocutory appeal before discovery even began. *Id.* at 56–57.

During oral argument, the Court questioned whether *Bonta* applies the same way to “an act of Congress” as it does a “California regulation.” Oral Arg. at 18:37–19:32. The Supreme Court answered that question in *First Choice*. It unanimously held that “any demand for donor information . . . must overcome heightened First Amendment scrutiny.” 2026 U.S. LEXIS 1949, at *17 (emphasis added). That’s because disclosure requirements—whether imposed by federal law or state regulation—“inevitabl[y]” deter people from exercising their First Amendment rights. See *id.*

As *First Choice* recognizes, this chilling effect is worse today than ever before. See *id.* at *31–32. The risk of a “hack or leak” means even confidential data “might wind up in the public domain,” where “anyone with . . . a computer can access” it. *Id.* (quotation omitted). The evidentiary burden that *Bonta* imposes on the government protects against those risks by ensuring the government does not unnecessarily collect such sensitive information. Buckeye Br. at 23–24, 55–56.

Sincerely,

/s/ Brett R. Nolan
Counsel for The Buckeye Institute

The body of this letter contains 301 words.

cc: All counsel (via CM/ECF)