

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, No. 2:22-cv-4297

**BRIEF OF *AMICUS CURIAE* STATE POLICY NETWORK AND 30
OTHER AFFILIATED ENTITIES**

James R. Saywell

Samuel V. Lioi

*Counsel of Record

William Tomlinson

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, OH 44114.1190

(216) 586-3939

slioi@jonesday.com

Counsel for State Policy Network

[Additional counsel listed on signature page]

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Disclosure of Corporate Affiliations and Financial Interest

Sixth Circuit

Case Number: 25-3170

Case Name: The Buckeye Institute v. IRS, et al.

Name of counsel: Samuel V. Lioi

Pursuant to 6th Cir. R. 26.1, State Policy Network and 30 Other Affiliated Entities
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:

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s/ Samuel V. Lioi

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.

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INTEREST OF AMICI CURIAE¹

Amici Curiae are a collection of 501(c)(3) nonprofits and similar entities focused on advancing various policy initiatives across the country. State Policy Network (SPN) is an independent 501(c)(3) association made up of state-focused, market-oriented policy research organizations that advocate and educate on matters of public policy throughout all fifty states. SPN is committed to helping its affiliates achieve enduring policy wins that defend liberty in their state and amplify the growth and influence of state-based organizations, with a commitment to advancing and protecting federalism, civil society, and free enterprise. SPN stands for the interests of countless nonprofits and the people associated with them who, through so much time and generosity, contribute to America's robust civil society and work to address society's most pressing problems.

¹ Counsel for all parties consented to the filing of this brief. Fed. R. App. P. 29(a)(2). No party's counsel authored this brief in whole or in part. No party or party's counsel, or any person, other than Amicus or its counsel, contributed money intended to fund the preparation or submission of this brief. Fed. R. App. P. 29(a)(4).

In addition to SPN, 30 other affiliated entities join in support from across the country. A full list of Amici is provided in the Appendix below.

The mandatory disclosure requirements for 501(c)(3) nonprofit organizations challenged by the Buckeye Institute here also impose serious burdens on Amici and their affiliates to engage in genuine issue advocacy and education. The disclosure requirements force these organizations to disclose many of their donors' identities and information to the government, thereby restricting the content of their speech and discouraging contributions by donors who often do not wish to be publicly identified with potentially controversial issue advocacy and education. Amici and their affiliates thus have a direct stake in this case's outcome.

STATEMENT REGARDING ORAL ARGUMENT

Counsel for Amici is willing to present oral argument on the issues raised in this brief, if ordered by the Court. *See* Fed. R. App. 29(a)(8).

INTRODUCTION

The freedom to associate is a foundational pillar of a free society. *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958); *Shelton v. Tucker*, 364 U.S. 479, 486 (1960); *Gibson v. Fla. Legis. Investigation Comm.*, 372 U.S. 539, 558 (1963). Associations amplify individuals' messages and enhance their ability to effect social and political change. But that freedom cannot fully exist—and its benefits become fully realized—without the corresponding right to associate *anonymously*. Likewise, the right to *speak* anonymously—itself a distinct method of communication and persuasion—contains virtues worthy of protection. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 342–43 (1995).

Forced disclosure burdens these rights. It threatens the harms of chilled speech and a diminished “marketplace of ideas,” *Citizens United v. FEC*, 558 U.S. 310, 335 (2010), as donors and recipients modify (or cease) their expressive activity to avoid reprisals, boycotts, and social ostracizing. Disclosure also inherently prohibits anonymous expression itself. And without anonymous association and expression, a range of important speech activity disappears. Amici understand these

burdensome realities all too well—they have personally experienced harassment aimed at curbing their (and donors’) associational speech, including via retaliation, doxxing, deplatforming, and even cold-blooded violence. *See infra*, Part II.B. These are among the many reasons why the Supreme Court subjects disclosure requirements to a demanding “exacting scrutiny” to meaningfully protect these key associational rights—and curb efforts by others to undermine those rights. *Ams. for Prosperity Found. v. Bonta*, 594 U.S. 595, 607 (2021) (*AFP*).

This case concerns a particularly burdensome disclosure law affecting broad swaths of this country. To qualify for advantageous tax treatment, a nonprofit organized under 26 U.S.C. § 501(c)(3) must disclose “the names and addresses of all substantial contributors.” 26 U.S.C. § 6033(b)(5). Because that disclosure requirement burdened the Buckeye Institute’s First Amendment rights, it sued the Internal Revenue Service (IRS) and other federal parties, arguing that the donor-disclosure rule could not satisfy exacting scrutiny—the standard typically applicable these types of disclosure requirements. *See AFP*, 594 U.S. at 607. The IRS, for its part, contends that the disclosure

requirement is merely a condition on nonprofit status and therefore exempted from normal scrutiny—notwithstanding that the disclosure requirement extends beyond how nonprofits *use* the funds and separately curbs constitutionally protected expression (both of which fall under the buckets of so-called “unconstitutional conditions”). But the district court rejected the IRS’s arguments and agreed with Buckeye that exacting scrutiny applied, thus setting the matter for trial to determine whether the donor-disclosure rule satisfied that rigorous test. Doc. 60 at 10–12.

This Court granted interlocutory appeal to determine whether exacting scrutiny should apply to this donor-disclosure rule. It should.

ARGUMENT

The First Amendment protects the right to privately associate for the expression of ideas. Laws that compel the disclosure of one’s associations burden that right, and must therefore satisfy exacting scrutiny. *AFP*, 594 U.S. at 607. That is, there must be a “substantial relation between the disclosure requirement and a sufficiently important governmental interest,” and the law must be “narrowly tailored to the government’s asserted interest.” *Id.* at 607–11. The exacting-scrutiny

standard applies regardless of whether the private-association burden comes as a carrot or a stick. Laws—like the donor-disclosure rule at issue here—that condition a government benefit on the relinquishment of an association’s privacy must still satisfy exacting scrutiny.

I. THE FIRST AMENDMENT PROTECTS ANONYMOUS ASSOCIATION AND RESTRICTS GOVERNMENT-IMPOSED DISCLOSURE.

The foundations for this case have been well-established for decades. Putting these principles together reveals that the First Amendment protects anonymous association both as a shield for other speech and as a component of speech itself.

A. The First Amendment prohibits the government from “abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I. “[I]mplicit in the right to engage in activities protected by the First Amendment [is] a corresponding right to associate with others.” *AFP*, 594 U.S. at 606 (citation modified). In particular, the freedom to assemble includes the “freedom to associate . . . for the common advancement of . . . beliefs and ideas.” *Kusper v. Pontikes*,

414 U.S. 51, 56 (1973). That right “lies at the foundation of a free society,” *Shelton*, 364 U.S. at 486, guaranteeing freedoms necessary for “the preservation of our democracy,” *Gibson*, 372 U.S. at 558. Association also enables individuals with little power or influence to band together for the advocacy of ideas: “Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association.” *NAACP*, 357 U.S. at 460. Recognizing the “inseparable” link between freedom of speech and association, the Supreme Court has evaluated governmental restrictions on association with “the closest scrutiny.” *Id.* at 460–61.

The right of association also includes the right to associate *privately*—and thus protects against compelled disclosure of one’s associations. *Gibson*, 372 U.S. at 55 (maintaining privacy is a “strong associational interest”); *AFP*, 594 U.S. at 619–20 (Thomas, J., concurring) (explaining that the “right to assemble includes the right to associate anonymously”). Like associational protections generally, anonymous association is “deeply rooted in American political tradition and in First Amendment doctrine.” *Novak v. City of Parma*, 932 F.3d 421, 434 (6th

Cir. 2019). That is because associational protections cannot fully exist without a concomitant right to *anonymous* association. As the Supreme Court has explained, there exists a “vital relationship between freedom to associate and privacy in one’s associations.” *NAACP*, 357 U.S. at 462. Privacy is often “indispensable” to a group’s ability to associate, “particularly where a group espouses dissident beliefs.” *Id.* Without anonymity, members of unpopular groups in particular may suffer reprisal or “public hostility,” which would “affect adversely the ability of [the association] and its members to pursue their collective effort to foster beliefs which they . . . have the right to advocate.” *Id.* at 462–63. The right to associate thus extends to the “significant number of persons who support causes anonymously.” *Watchtower Bible & Tract Soc’y of N.Y., Inc. v. Village of Stratton*, 536 U.S. 150, 166–67 (2002).

All told, the right to anonymous association is integral for everyone. But the right to anonymous association is at its apex when citizens face a credible fear of reprisal for association with a particular group. Forced disclosure of associational membership for such groups creates a greater

“potential for impairing First Amendment interests.” *Brown v. Socialist Workers ’74 Campaign Comm. (Ohio)*, 459 U.S. 87, 92–101 (1982).

B. In addition to prohibiting the government from chilling an association’s speech altogether, the First Amendment also prohibits the government from changing the expressive content of the association itself by protecting an organization’s “expressive associational right.” *Boy Scouts of Am. v. Dale*, 530 U.S. 640, 648 (2000). Government interference with “expressive association” can take many forms. The government might seek to compel organizations to accept unwanted members, *id.* at 653, host others’ messages, *see Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 572–73 (1995); subsidize an unwanted group, *see Janus v. Am. Fed’n of State, Cnty., & Mun. Emps., Council 31*, 585 U.S. 878, 893 (2018); or use artistic talent for clients that would alter their message, *see 303 Creative LLC v. Elenis*, 600 U.S. 570, 589–92 (2023). Whatever the nature of the government action, the First Amendment prohibits the government from “forc[ing] [an] organization to send a message” contrary to its beliefs. *Dale*, 530 U.S. at 653.

Anonymity is an expressive component of many associations. Indeed, “all speech inherently involves choices of what to say and what to leave unsaid,” *Hurley*, 515 U.S. at 573, and “the identity of the speaker is no different from other components of the document’s content that the author is free to include or exclude,” *McIntyre*, 514 U.S. at 348. “[Q]uite apart from any threat of persecution, an advocate may believe her ideas will be more persuasive if her readers are unaware of her identity.” *Id.* at 342. “Anonymity thereby provides a way for” speakers “who may be personally unpopular to ensure that readers will not prejudge her message simply because they do not like its proponent.” *Id.* Anonymity is thus often part of expressive association.

Forced disclosure, in turn, does not merely chill that association’s speech—it interferes with an aspect of the association’s defining message. Consider how anonymity can affect a speaker’s message. It might change the content. An anonymously provided jar full of money for the Christmas season speaks differently than a gift from a known donor. *See, e.g.,* Jason F. Wright, *Christmas Jars* (2005). The gift amount might be the same. The same written message might appear on both gifts. But

the communicated message is quite different. Or anonymity might communicate a unique organizational purpose, such as Alcoholics Anonymous' culture of confidential community.

Anonymity is thus protected by the First Amendment's right to "expressive association." *Rumsfeld v. FAIR*, 547 U.S. 47, 69 (2006) (citing *Socialist Workers*, 459 U.S. at 101–02). That protection exists both to facilitate speech and enhance its effect. And so courts apply meaningful constitutional scrutiny before upholding laws impairing such rights.

II. EXACTING SCRUTINY PROTECTS AGAINST BURDENS FROM COMPELLED DISCLOSURE.

Laws that burden this First Amendment freedom must satisfy exacting scrutiny. And for good reason. In a culture so acquainted with speech-based threats and violence, the freedom to anonymously associate is necessary now more than ever—as Amici's own experiences reinforce.

A. Because "broad and sweeping state inquiries into these protected areas . . . discourage citizens from exercising rights protected by the Constitution," the First Amendment subjects donor-disclosure regimes to "exacting scrutiny." *AFP*, 594 U.S. at 607, 610 (plurality

section) (citation modified); *but see id.* at 619–20 (Thomas, J., concurring) (arguing that strict scrutiny should apply). A law satisfies exacting scrutiny if it “substantially relate[s] to a sufficiently important interest” and is “narrowly tailored” to that interest. *Id.* at 607–09. Few disclosure regimes satisfy that standard of review; those that have fall almost entirely within the unique context of elections. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 64–68 (1976) (discussing unique concern for quid pro quo corruption of political candidates). (Though even those cases might sit in some tension with broader constitutional principles. *See, e.g., Majors v. Abell*, 361 F.3d 349, 358 (7th Cir. 2004) (Easterbrook, J., dubitante); *Van Hollen, Jr. v. FEC*, 811 F.3d 486, 501 (D.C. Cir. 2016).)

Exacting scrutiny is exacting for a reason. It ensures that the government will not, whether directly or by the enabling of private parties, *see NAACP*, 357 U.S. at 463, chill citizens’ free expression. It protects the right to speak freely, regardless of how one’s ideas are received. And the need for judicial skepticism is especially potent given the inherent bias in these disclosure laws, which often leak into viewpoint discrimination. A disclosure law “raises the specter that the

Government may effectively drive certain ideas or viewpoints from the marketplace.” *R.A.V. v. City of St. Paul*, 505 U.S. 377, 387 (1992). That is because, by requiring donor disclosure, the state is necessarily taking the side of non-controversial expression. Although anyone can potentially benefit from anonymity, it is especially important for the unpopular, dissenting view—disclosure laws are essentially status-quo-protection laws. To paraphrase Justice Scalia, promoters of popular views can fight “freestyle,” while promoters of unpopular views must “follow Marquis of Queensberry rules.” *Id.* at 392.

B. These concerns are not abstract. Amici and others with similar policy views have personally experienced harassing and violent behavior. Take a few illustrative examples.

- In 2018, disgruntled citizens papered the neighborhood of a Freedom Foundation executive with flyers accusing him of white supremacy and encouraging others to harass him on the street based on the Freedom Foundation’s associations. Freedom Found. Br. as Amicus Curiae Supp. Pet. 5, App. I, *Am. for Prosperity Found. v. Becerra*, No. 19-251 (Mar. 1, 2021).
- The Freedom Foundation’s CEO had her tires slashed and home windows spray painted. Pl.-Appellant’s Opening Br. 12, *Rio Grande Found. v. City of Santa Fe*, No. 20-2022 (10th Cir. 2021 May 6, 2020), Doc. No. 20.

- A director for the Mackinac Center for Public Policy received a threatening phone call during a radio appearance that implied he was not safe at home. *Id.* at 12–13.
- The President of the Arizona Free Enterprise Club regularly receives threatening and harassing calls, voicemails, and emails. Am. Compl. for Declaratory & Injunctive Relief Ex. 2, at 7, *Ctr. for Ariz. Pol’y Inc. v. Ariz. Sec’y of State*, No. CV2022-016564 (Maricopa Cty. Super. Ct. July 21, 2023).
- In January 2024, arsonists set fire to the headquarters of Center for the American Experiment. Bill Walsh, *Arsonists target American Experiment offices*, Am. Experiment (Feb. 2, 2024), <https://www.americanexperiment.org/arsonists-target-american-experiment-offices/>. (The organization has since had to hire armed security for all of its events.)

And the risks often emanate beyond just the organizations directly involved in the expressive activity. In 2016, for example, the International Brotherhood of Teamsters engaged in a smear campaign to force Wells Fargo to fire an executive because he served on the board of a charity that donated to the Freedom Foundation. Freedom Found. Amicus Br., *supra*, App. F. In another example, an education organization demanded the names and addresses of *anyone* who had *ever* received certain solicitations from the Mackinac Center related to its advocacy. See *Mackinac Free Speech: The Michigan Education Association Tries to Take the “Free” out of “Free Speech”*, Inst. for Just.

(last visited Nov. 18, 2025), <https://ij.org/case/battaglieri-v-mackinac-center-for-public-policy/>. These examples abound.

This harassing and violent behavior is not a peaceful effort by concerned citizens to engage with these organizations' ideas in the public square. These actions were designed to personally intimidate those who dared to associate with a disfavored group and were possible only because of a coordinated investigation into the personal lives of the speakers. Were these organizations' donor lists to become public information, many donors would likely experience the same harassment and threats—and thus might reasonably choose not to associate with the organizations in the first place (accomplishing the hecklers' aims). Neither Amici, nor its donors, nor any other speaker should have to depend on the good faith or competence of every single IRS worker with access to donor lists, particularly when trust has been breached in the past, *see* *Buckeye* Br. 12–15; Doc. 36 at 7–8—at least not without properly subjecting such rules to the scrutiny that the First Amendment requires.

* * *

Exacting scrutiny is the appropriate standard for evaluating the constitutionality of laws that burden the right to anonymously associate. That standard should apply to the IRS's disclosure law here.

III. THE DONOR-DISCLOSURE RULE IS NOT EXEMPTED FROM TYPICAL FIRST AMENDMENT SCRUTINY.

Without disputing the principles above, the IRS seeks refuge from the normal scrutiny applied to disclosure laws because it says this law is merely a condition on organizations' tax benefits—and thus that this law therefore is permissible so long as it survives rational-basis review. But there is no reason to exempt this law from typical First Amendment scrutiny. The donor-disclosure rule cannot be characterized merely as a defining limit on a government subsidy or as a “use” of those funds. It instead reaches outside of the contours of the tax-exemption scheme and requires the complete relinquishment of the constitutional right to anonymously associate. More, the donor-disclosure rule conditions government funding for private speech based on viewpoint. For both of those reasons, at least exacting scrutiny should apply.

A. Rational-basis scrutiny is improper because the disclosure rule improperly leverages the government’s power to regulate speech.

1. Congress’s power to tax and spend for the “general Welfare” has limits, U.S. Const. art. I, § 8, including the First Amendment’s limitation “on Congress’s ability to place conditions on the receipt of funds,” *Rumsfeld*, 547 U.S. at 59. Even if the IRS disclosure rule constitutes a condition on funding, then, the government “may not deny a benefit to a person on a basis that infringes his constitutionally protected . . . freedom of speech even if he has no entitlement to that benefit.” *Agency for Int’l Dev. v. All. for Open Soc’y Int’l, Inc.*, 570 U.S. 205, 214 (2013) (*AID*) (quoting *Rumsfeld*, 547 at 59). At the same time, though, the government may “selectively fund certain programs” by imposing conditions that “define the limits of the government spending program.” *Id.* at 214, 217. The line between those two categories is “hardly clear.” *Id.* at 215. But the Supreme Court has provided some principles for discerning the dividing line.

a. Whether a specific funding condition merely defines the government’s intended use for the funds or rather “leverage[s] funding to

regulate speech outside the contours of the program itself,” *id.* at 214–15, turns on how pervasively the condition prohibits the would-be recipient’s desired expression.

On one side, conditions that allow the recipient to express its message with the use of private funds and provide a means of segregating the use of the federal funds need only satisfy rational-basis review. *See, e.g., Rust v. Sullivan*, 500 U.S. 173, 192–99 (1991) (restriction on using Title X funds to promote abortion permissible because it allowed individual to promote abortion while not using program dollars); *Regan v. Taxation with Representation of Wash.*, 461 U.S. 540, 543–44 (1983). According to the U.S. Supreme Court, such conditions are permissible because they merely regulate a recipient’s *use* of federal funds for a specific activity. *See Rust*, 500 U.S. at 196; *AID*, 570 U.S. at 213–14.

On the other side, conditions that present a binary choice between accepting government funds or expressing the prohibited message burden the recipient’s First Amendment rights and must therefore satisfy normal constitutional scrutiny. *See, e.g., FCC v. League of Women Voters of Ca.*, 468 U.S. 364, 399–400 (1984) (condition which forbade the

recipient from all editorializing if it accepted funds unconstitutional); *AID*, 570 U.S. at 218–21 (condition which required promulgation of an anti-prostitution policy if the recipient accepted funds unconstitutional); *see also Bethel Ministries, Inc. v. Salmon*, 2022 WL 111164, at *10–11 (D. Md. Jan. 12, 2022). Funding conditions in this latter category cannot be connected to any specific *use* of the federal funds because they function as a perpetual restriction on the speaker—so long as it is, as a matter of status, a recipient of funds. *See, e.g., Rust*, 500 U.S. at 197 (unconstitutional conditions cases involve government-imposed “condition on the recipient of the subsidy rather than on a particular program or service”); *League of Women Voters*, 468 U.S. at 400–01 (broadcast station that received *any* federal funding, even less than 1%, forbidden from all editorializing).

b. Under these principles, the IRS’s donor-disclosure rule conditions a tax benefit on recipients’ relinquishment of certain First Amendment rights and must therefore satisfy exacting scrutiny. The rule bars a specific First Amendment activity—anonymous association—if the recipient wishes to receive § 501(c)(3)’s tax benefits. It presents a

binary choice between relinquishment of a constitutional right and federal funding because it operates as a perpetual restriction, regardless of what the organization *does* after it receives federal funds. So long as an association receives funding, it may not associate privately.

2. So why does the IRS maintain that this disclosure law eludes First Amendment scrutiny? It relies almost entirely on one case, *Regan*, to suggest that conditions on § 501(c)(3)'s tax subsidy are subject only to rational-basis review. *See, e.g.*, Opening Br. 27–32 (emphasizing *Regan*). But the IRS overreads *Regan*. *Regan* involved a suit over § 501(c)(3)'s restriction on lobbying activities. 461 U.S. at 541–43. A nonprofit argued that the lobbying activities restriction violated the First Amendment as an unconstitutional condition. *Id.* at 545. The Supreme Court disagreed, holding that Congress had not burdened the nonprofit's rights because it had merely decided “not to subsidize” the nonprofit's lobbying activities. *Id.* at 549. The Court also noted that the nonprofit could “obtain tax deductible contributions for its non-lobbying activity by returning to [a] dual structure . . . with a § 501(c)(3) organization for non-lobbying activities and a § 501(c)(4) organization for lobbying.” *Id.* at 544.

Picking up on the last point, the IRS relies heavily on this affiliate-dual-structure point to justify its law—it says that that the donor-disclosure rule imposes no constitutional burden when the entity can merely organize itself via a separate entity. Gov’t Br. 10, 24–25, 31. But neither *Regan* nor that rationale warrants rational-basis review here for many reasons.

a. As a threshold matter, *Regan*’s affiliate-dual-structure holding has been overtaken by subsequent precedent. In *Citizens United v. FEC*, the Supreme Court held that a ban on electioneering communications by a corporation was an unconstitutional burden on the corporation’s First Amendment rights. 558 U.S. 310, 336–72 (2010). That was so, the Court held, even though the law allowed the corporation to set up a Political Action Committee (PAC) that could engage in electioneering communications. *Id.* at 337–38. The availability of a PAC did not alleviate the burden on the corporation’s rights because (i) “[a] PAC is a separate association from the corporation” and, (ii) even if the PAC could speak for the corporation, the burdens associated with creating a PAC were a burden on the corporation’s First Amendment rights. *Id.*

So too here. Section 501(c)(3) organizations must be organizationally and operationally distinct from any § 501(c)(4) affiliates. *See* 26 C.F.R. § 1.501(c)(3)-1; *Agency for Int’l Dev. v. All. for Open Soc’y Int’l*, 591 U.S. 430, 435 (2020) (“[S]eparately incorporated organizations are separate legal units with distinct legal rights and obligations.”). And even if the affiliate organizations were not considered distinct, the tax penalties on a § 501(c)(4) affiliate burden the § 501(c)(3) organization’s First Amendment rights. *See Freedom Path, Inc. v. IRS*, 2025 WL 2779771, at *16 n.9 (D.D.C. Sept. 30, 2025) (citing *Citizens United* and holding that the ability to create a § 527 organization for speech intended to influence an election did not alleviate burden on § 501(c)(4)’s rights because of the differential tax treatment); *Buckeye Br.* 44–46.

b. But to the extent *Regan’s* affiliate-dual-structure holding survived *Citizens United* at all, later cases have narrowed its breadth in two ways. First, when evaluating a recipient’s ability to sequester federal funds for specified uses, the Court’s later cases have asked whether the recipient could express its desired message *while receiving the specific benefit at issue*. In other words, forgoing the benefit altogether is not a

viable cure for a constitutional defect. *See AID*, 570 U.S. at 219 (“If the affiliate is distinct from the recipient, the arrangement does not afford a means for the *recipient* to express *its* beliefs.”); *League of Women Voters*, 468 U.S. at 400 (similar). Consequently, the ability to segregate funds for the specified use is not merely convenient, it is constitutionally necessary. *See League of Women Voters*, 468 U.S. at 400–01.

Second, the ability to set up a § 501(c)(4) affiliate does not automatically remove the burden on the recipient’s First Amendment rights. To the extent that it can cure that problem at all, a dual structure cures an otherwise defective funding condition only when the two entities can retain their unitive identity as the same speaker while merely segregating the restricted activities. *See AID*, 570 U.S. at 219. But if a funding condition would render the two affiliates distinct speakers, or else force the single speaker to voice two contradictory messages, it burdens the recipient’s First Amendment rights. *See id.* (dual structure would not fix First Amendment problem because recipient who must oppose prostitution cannot be united with an affiliate that promotes prostitution without “evident hypocrisy”).

The donor-disclosure rule falls outside *Regan*'s dictates—and the Supreme Court's subsequent refining of its ruling—for three reasons.

First, the condition in *Regan* can rightly be categorized as a restriction on the *use* of federal funds for specific activities. Not so here, as the district court held and *Buckeye* explained. *See* Doc. 60 at 11–12; *Buckeye* Br. 37–40. A requirement that a funding recipient disclose its donors is the type of condition that imposes a perpetual restriction on speech, rather than limiting certain speech when using federal funds. *See AID*, 570 U.S. at 217–18 (distinguishing between permissible prohibition of using funds to “promote or advocate the legalization or practice of prostitution” and an impermissible “ongoing condition on recipients’ speech”); *Bethel Ministries*, 2022 WL 111164 at *1–6, *11 (school eligibility for scholarship program could be conditioned on school’s nondiscrimination in admissions but not on school’s statement of beliefs in student handbook). So this law impermissibly turns on the status of the speaker as a funding recipient and furthers no use-based restriction.

Second, and relatedly, the magnitude of the restriction in *Regan* was much smaller. Section 501(c)(3)'s restriction on lobbying targets a

narrow and specific category of speech—speech intended to influence specific legislation. By contrast, the government’s donor-disclosure rule limits an entire form of association and, as a consequence, restricts all speech of any topic whatsoever from that anonymous association.

Third, the nature of *Regan*’s funding condition allowed a recipient to avoid the burden on its First Amendment rights by adopting a dual structure. By contrast, a dual structure would not remove the First Amendment burden imposed by the donor-disclosure rule. As explained above, one of the principal reasons citizens associate privately is to avoid the consequences of public disclosure. *See supra* I.A. Such a person is unlikely to associate anonymously with the § 501(c)(4) affiliate and then publicly associate with its § 501(c)(3) organizational counterpart. The dual structure does not remove the chill on the donor’s First Amendment rights and would instead destroy the unitive identity of the associations. And from an expressive associational perspective that considers anonymity an aspect of an association’s message, a dual structure would create the very problems present in *AID*. Compelling an affiliate of an anonymous organization to become *non*-anonymous forces that affiliate

to associate in a manner directly contradictory to its own beliefs and the beliefs of the organization with which it is identified. That forced double-mindedness implicates the First Amendment. *See AID*, 570 U.S. at 219.

3. The IRS's other arguments misunderstand the law in several ways. For one, the IRS considers the option to completely forgo a government benefit as evidence that the law imposes no burden on First Amendment rights. *See* Opening Br. 24. That thinking is flawed for the reasons stated above: the proper analytical framework must assume the recipient can exercise its First Amendment rights *while* receiving the benefit. Otherwise, unconstitutional conditions would never exist. *Cf. Mahmoud v. Taylor*, 606 U.S. 522, 562 (2025) (rejecting argument that availability of private schools eliminates First Amendment burden for parents in public schools). So long as accepting the benefit is technically voluntary, any conditions would be constitutional. The IRS's argument thus proves too much.

The IRS's flawed reasoning also infects its argument about affiliates. It assumes that a donor who has the option to donate to § 501(c)(3) or a § 501(c)(4) affiliate, and chooses the latter to remain

anonymous, has suffered no burden on his First Amendment associational rights. Opening Br. 24–25. The IRS presses that argument despite the tax code’s differential treatment of the donor’s contributions. The only way that the IRS’s argument can make sense is if forgoing a tax benefit entirely fixes the First Amendment problem. It does not.

* * *

A funding condition is not subject to rational-basis review solely because it is a voluntary subsidy. Such subsidies must allow for the recipient to still express its beliefs. When they do not, they must satisfy exacting scrutiny. That is the case here.

B. The donor-disclosure rule also impermissibly regulates private viewpoint.

1. The Supreme Court’s *Regan-Rust-AID* test provides adequate reason to hold that the donor-disclosure rule burdens First Amendment expression and must satisfy exacting scrutiny. But in addition to those arguments, the donor-disclosure rule also implicates a different category of cases—cases where the government sought not only to regulate speech in general but specifically the recipient’s viewpoint. *See Regan*, 461 U.S.

at 548 (government’s selective funding criteria cannot “aim at the suppression of [] ideas” (citation modified)). This further reinforces the need for meaningful scrutiny of disclosure rules like the IRS’s here.

Legal Services Corp. v. Velasquez, 531 U.S. 533 (2001) demonstrates this point well. There, the government appropriated funds for the legal representation of indigent individuals but also forbade any funding recipient from challenging the legal validity of a state or federal welfare law. *Id.* at 536–38. When evaluating the constitutionality of the funding condition, the Supreme Court began not by asking whether the condition formed part of the “scope” of the government program, but by asking whether the condition regulated government or private speech. *Id.* at 541–44 (distinguishing condition in *Rust* that rested on “governmental speech” rationale). The Court concluded that the legal services program provided funding for private speech, not government speech. *Id.* The Court then found the condition unconstitutional because, as a regulation of private speech, it sought to “draw lines” around “those arguments and theories Congress finds unacceptable.” *Id.* at 546.

The Court also rejected the government’s argument that the condition was “necessary to define the scope and contours of the federal program” because Congress “cannot recast a condition on funding as a mere definition of its program in every case, lest the First Amendment be reduced to a simple semantic exercise.” *Id.* at 547. Absent a “programmatically message of the kind recognized in *Rust*,” the condition operated as a viewpoint-based restriction of private speech. *Id.* at 548. And “[w]here private speech is involved, even Congress’ antecedent funding decision cannot be aimed at the suppression of ideas thought inimical to the Government’s own interest.” *Id.* at 548–49.

2. The donor-disclosure rule burdens speech in a similar way.

a. To begin with, Congress’s tax exemption scheme funds quintessentially private speech. It “encourage[s] a diversity of views from private speakers.” *Id.* at 542 (quoting *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 834 (1995)). Section 501(c)(3) status is available to any “charitable, scientific, . . . literary, or educational purposes.” 26 U.S.C. § 501(c)(3). It does not depend on the recipient’s expression of a specific message. Rather, recipients can express all kinds

of opposing messages. Section 501(c)(3) provides tax benefits to pro-capitalism and pro-socialism organizations, pro-life and pro-choice organizations, as well as conservative and liberal organizations. Treating this as government speech, by contrast, would mean the government is “babbling prodigiously and incoherently” and “expressing contradictory views.” *Matal v. Tam*, 582 U.S. 218, 236 & n.9 (2017). That is also why the IRS has pointed to no programmatic message that the tax exemption scheme was established to promote.

b. Besides funding private speech, the government also discriminates based on viewpoint with its tax-exemption condition. Government funding that differentiates different speakers for different treatment can constitute viewpoint discrimination. *Citizens United*, 558 U.S. at 340. Even if in the conventional conditional-funding case “[*Regan*] stands for the proposition that a tax scheme that discriminates among speakers does not implicate the First Amendment unless it discriminates on the basis of ideas,” *Leathers v. Medlock*, 499 U.S. 439, 450 (1991), it remains true that sometimes “[s]peech restrictions based on the identity of the speaker are all too often simply a means to control content,” *Okla.*

Corr. Pro. Ass'n v. Doerflinger, 521 F. App'x 674, 679 (10th Cir. 2013) (quoting *Citizens United*, 558 U.S. at 340); see also *Anderson Fed'n of Tchrs. v. Rokita*, 666 F. Supp. 3d 789, 806–07 (S.D. Ind. 2023) (similar).

This disclosure rule practically discriminates based on the speaker's viewpoint. Continuing this country's "respected tradition of anonymity in the advocacy of political causes[.]" *McIntyre*, 514 U.S. at 343, anonymity is a central component of many groups' expressive association. Anonymity thus expresses a particular viewpoint: that the central importance of the group is in its collective identity rather than in the identity of its constituent members and that the voice of the group should be associated solely with that collective identity. See *id.* Groups continue to express their anonymous viewpoint to continue their "unique role as . . . check[s] on government abuse[.]" *Leathers*, 499 U.S. at 447 (noting how the press plays a similar role and describing how "a tax limited to the press raises concerns about censorship of critical information and opinion"); *Wash. Post v. McManus*, 944 F.3d 506, 515 (4th Cir. 2019) ("[M]any political advocates today also opt for anonymity in hopes their arguments will be debated on their merits rather than

their makers.”). Denying a tax benefit to an organization solely because it expresses associational viewpoints triggers at least exacting scrutiny.

3. That is not to say that all disclosure regimes necessarily violate the Constitution. *Cf., e.g., Buckley*, 424 U.S. at 64–68. But at a minimum, funding conditions that purport to regulate a private viewpoint are subject to exacting scrutiny, not rational-basis review.

* * *

Much of the IRS’s arguments, when properly construed, instead focus on why the disclosure rule should satisfy that level of scrutiny. Opening Br. 33–39, 53–64. If this Court chooses to apply the proper scrutiny here, the Buckeye Institute ably explains why this disclosure rule is unconstitutional. *See* Buckeye Br. 55–60. But this Court should at least affirm the district court’s decision that exacting scrutiny applies—and remand for further proceedings under that meaningful level of scrutiny aimed at protecting core First Amendment activity.

CONCLUSION

This Court granted interlocutory appeal to resolve whether this disclosure regime is subject to at least the same level of scrutiny as other disclosure laws. The answer to that question is yes.

Dated: November 26, 2025

Respectfully submitted,

/s/ Samuel V. Lioi

James R. Saywell

Samuel V. Lioi

*Counsel of Record

William Tomlinson

JONES DAY

North Point

901 Lakeside Avenue

Cleveland, OH 44114.1190

(216) 586-3939

slioi@jonesday.com

Counsel for *Amicus Curiae State
Policy Network*

/s/ Caleb O. Brown

Caleb O. Brown

CEO

Bluegrass Institute

P.O. Box 11706

Lexington, KY 40577-1706

(703) 889-0312

cob@bluegrassinstitute.org

/s/ John A. Charles, Jr.

John A. Charles, Jr.

President & CEO

Cascade Policy Institute

4850 SW Scholls Ferry Road

Suite 103

/s/ Scot Mussi

Scot Mussi

President

Arizona Free Enterprise Club

1835 E. Elliot Rd., Suite 102

Tempe, AZ 85284

(602) 385-0757

scot@azfree.org

/s/ Wencong Fa

Wencong Fa

Ben Stormes

Beacon Center of Tennessee

1200 Clinton Street, Suite 205

Nashville, TN 37203

(615) 383-6431

wen@beacontn.org

/s/ Emily Rae

Emily Rae

California Policy Center

18002 Irvine Blvd., Ste. 108

Tustin, CA 92780

(949) 237-2573

emily@calpolicycenter.org

/s/ John Hinderaker

John Hinderaker

President

Center for the American Experiment

Portland, OR 97225
(503) 242-0900
john@cascadepolicy.org

/s/ Megan Martin

Megan Martin
COO & General Counsel
Commonwealth Foundation for Public
Policy Alternatives
223 State Street
Harrisburg, PA 17101
(717) 343-4171
mlm@commonwealthfoundation.org

/s/ Grant Callen

Grant Callen
Founder & CEO
Empower Mississippi
1000 Northpark Drive
Ridgeland, MS 39157
(601) 980-1897
mail@empowerms.org

/s/ Terry Kibbe

Terry Kibbe
CEO
Free the People Foundation
611 Pennsylvania Ave SE #250
Washington, DC 20003
(202) 669-1692
tkibbe@freethepeople.org

/s/ Audrey Lane

Audrey Lane
President

12600 Whitewater Drive, Suite 150
Minnetonka, MN 55343
(612) 354-1239
John.hinderaker@american
experiment.org

/s/ Nicole Neily

Nicole Neily
President
Defending Education
4532 Cherry Hill Rd, Suite 119
Arlington, VA 22207-3304
Nicole.neily@defendinged.org

/s/ David Craig

David Craig
Legal Director
Foundation for Government
Accountability
15275 Collier Blvd.
Suite 201-279
Naples, FL 34119
(239) 244-8808 ext. 162
dcraig@thefga.org

/s/ Eric Stahlfeld

Eric Stahlfeld
Chief Litigation Counsel
Freedom Foundation
P.O. Box 552
Olympia, WA 98507
(360) 956-3482
EStahlfeld@freedomfoundation.com

Garden State Initiative
P.O. Box 9180
Morristown, NJ 07963
(443) 803-8827
alane@gardenstateinitiative.org

/s/ Kyle Wingfield
Kyle Wingfield
President and CEO
Georgia Public Policy Foundation
3200 Cobb Galleria Pkwy, Suite 214
Atlanta, GA 30339
(404) 256-4050
kylew@georgiapolicy.org

/s/ J. Robert McClure III, Ph. D
J. Robert McClure
President and CEO
The James Madison Institute
100 N. Ducal St.
Tallahassee, FL 32301
(850) 386-3131
bob@jamesmadison.org

/s/ Annette Olson
Annette Olson
CEO
The John K. MacIver Institute for
Public Policy, Inc.
44 E Mifflin, Suite 404
Madison, WI 53703
(608) 630-2093
aolson@maciverinstitute.com

/s/ Randy Hicks
Randy Hicks
President and CEO
Georgia Center for Opportunity
3847 Medlock Bridge Road
Peachtree Corners, GA 30092
(770) 242-0001
RandyH@foropportunity.org

/s/ Mailee Smith
Mailee Smith
Vice President of Policy and
Litigation
Illinois Policy Institute
300 S. Riverside Plaza, Suite 1650
Chicago, IL 60606
(312) 346-5700
msmith@illinoispolicy.org

/s/ Jeanette Doran
Jeanette Doran
I. Beverly Lake, Jr. Chair of
Constitutional Studies
Senior Counsel
John Locke Foundation
4800 Six Forks Rd., Suite 220
Raleigh, NC 27609
(919) 828-3876
jdoran@lockehq.org

/s/ Joseph G. Lehman
Joseph G. Lehman
President
Mackinac Center for Public Policy
140 West Main Street

/s/ James Kerwin

James Kerwin
Senior Counsel
Mountain States Legal Foundation
2596 S. Lewis Way
Lakewood, Colorado 80227
(303) 292-2021
jkerwin@mslegal.org

/s/ Wells Winegar

Wells Winegar
Executive Director
New Jersey Policy Institute
PO Box 17
Morristown, NJ 07963
(609) 439-8637
Wells@newjerseypolicyinstitute.org

/s/ Jim Stergios

Jim Stergios
Executive Director
Pioneer Institute
185 Devonshire Street, Suite 1101
Boston, MA 02110
(617) 723-2277
jstergios@pioneerinstitute.org

/s/ Jim Vokal

Jim Vokal
Chief Executive Officer
Platte Institute
6910 Pacific Street, Suite 216
Omaha, NE 68106
(402) 452-3737
Jvokal@platteinstitute.org

Midland, MI 48640
(989) 631-0900
lehman@mackinac.org

/s/ Chris Cargill

Chris Cargill
President and CEO
Mountain States Policy Center, Inc.
P.O. Box 2639
Coeur D'Alene, ID 83816
(208) 295-9525
ccargill@mountainstatespolicy.org

/s/ Wendy Damron

Wendy Damron
President and CEO
Palmetto Promise Institute
1201 Hampton St., Suite 2A
Columbia, SC 29201
(803) 530-1974
wendy@palmettopromise.org

/s/ Frank Bailey

Frank Bailey
President
Pioneer New England Legal
Foundation
185 Devonshire Street, Suite 1101
Boston, MA 02110
(617) 819-1010
Frank.bailey@pioneerlegal.org

/s/ Giovanni D. Cicione, Esq.

Giovanni D. Cicione, Esq.
Chair, Law Center Subcommittee
R.I. Center for Freedom & Prosperity
86 Ferry Lane
Barrington, RI 02806
(401) 996-3536
g@cicione.law

/s/ Steven Hatting

Steven Hatting
President & CEO
Washington Policy Center
1100 Olive Way
Seattle, WA 98101
(206) 719-6223
hatting@washingtonpolicy.org

/s/ Lynn Taylor

Lynn Taylor
President
Virginia Institute for Public Policy
P.O. Box 76
Lexington, VA 24450
(540) 245-1776
taylor@virginiainstitute.org

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation for an amicus brief because it contains 5965 words. *See* Fed. R. App. P. 29(a)(4) and (b)(4). This brief also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface (Century Schoolbook 14-point type) using Microsoft Word.

Dated: November 26, 2025

/s/ Samuel V. Lioi
Samuel V. Lioi

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Amicus Brief was filed this 26th day of November, 2025, through the Court's Electronic Filing System. Parties will be served, and may obtain copies electronically, through the operation of the Electronic Filing System.

Dated: November 26, 2025

/s/ Samuel V. Lioi
Samuel V. Lioi

APPENDIX A

In addition to the State Policy Network, this brief is submitted on behalf of the following entities:

- **Arizona Free Enterprise Club** is an Arizona nonprofit social welfare corporation that engages in public education and advocacy in support of free markets, limited government, and economic growth in the State of Arizona.
- **The Beacon Center of Tennessee** is a nonprofit public interest organization that strives to protect individual rights and eliminate government barriers to opportunity.
- **The Bluegrass Institute** is a donor-supported nonprofit, nonpartisan organization dedicated to transforming the commonwealth into a beacon of freedom and opportunity for all Kentuckians by advancing freedom and prosperity through the promotion of individual liberty, limited government, and free markets.
- **The California Policy Center** is an educational nonprofit working for the prosperity of all Californians by eliminating public-sector barriers to freedom.

- **Cascade Policy Institute** is an Oregon-based nonprofit charitable organization working to promote individual liberty, economic opportunity, and personal responsibility.
- **The Center of the American Experiment** is a think tank that researches and produces papers on Minnesota's economy, education, health care, the family, employee freedom, and state and local governance, and also crafts and proposes creative solutions that emphasize free enterprise, limited government, personal responsibility, and government accountability.
- **The Commonwealth Foundation for Public Policy Alternatives** is a nonprofit think tank based in Harrisburg, Pennsylvania that transforms free market ideas into public policies, empowering all Pennsylvanians to thrive.
- **Defending Education** is a national grassroots organization working to restore schools at all levels from activists imposing harmful agendas.
- **Empower Mississippi** is a solutions center, working with stakeholders to tackle Mississippi's biggest challenges, focusing on removing barriers to opportunity so that people in the Magnolia

State can earn success, contribute to their families and communities, and live meaningful lives.

- **The Foundation for Government Accountability** is a nonprofit organization engaging in policy work in the areas of welfare, unemployment, workforce, election integrity, and health care.
- **The Free the People Foundation** is a nonprofit organization whose mission is to inspire a new generation to embrace personal liberty, peaceful cooperation, and limited government.
- **The Freedom Foundation** is a nonpartisan organization working to advance individual liberty, free enterprise, and limited, accountable government.
- **The Garden State Initiative** is a nonprofit organization whose mission is to strengthen New Jersey by providing an alternative voice and common sense policy solutions in the state—solutions that promote new investment, the growth of jobs, the creation of economic opportunities, and innovation to the benefit of all New Jerseyans.
- **Georgia Center for Opportunity** is a nonprofit organization whose mission is to remove barriers to ensure that every person—

no matter their race, past mistakes, or the circumstances of their birth—has access to a quality education, fulfilling work, and a healthy family life.

- **The Georgia Public Policy Foundation** is a market-oriented, state-based think tank that promotes and defends economic liberty and opportunity so Georgia's people and communities can grow stronger, freer, and more prosperous.
- **The Illinois Policy Institute** is a nonpartisan research organization funded by the voluntary contributions of thousands of committed supporters from across the state who share its belief in free markets, free people, and a more prosperous Illinois.
- **The James Madison Institute** is a nonprofit organization whose mission is to tether the Sunshine State to the wisdom of free-market capitalism, limited government, the rule of law, economic liberty, and the principles that have made our nation great.
- **The John Locke Foundation** is a nonprofit organization that envisions a North Carolina in which liberty and limited, constitutional government are the cornerstones of society so that

individuals, families, and institutions can freely shape their own destinies.

- **The John K. MacIver Institute for Public Policy** is a Wisconsin-based think tank that promotes free markets, individual freedom, and responsible government.
- **The Mackinac Center for Public Policy** is a Michigan-based, nonpartisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property.
- **Mountain States Legal Foundation** is a nonprofit public-interest law firm dedicated to bringing before the courts issues that are vital to the defense and preservation of individual liberties: the right to equal justice under law, the right to speak freely, the right to own and use property, and the need for limited and ethical government.
- **Mountain States Policy Center** is a nonprofit organization founded to empower individuals to succeed through nonpartisan, quality research that promotes free enterprise, individual liberty, and limited government.

- **The New Jersey Policy Institute** exists to ignite, incubate and launch winning ideas for effective education, a strong economy, a thriving business environment, and affordable energy.
- **Palmetto Promise Institute** is a South Carolina-based policy organization that relies on the voluntary support of donors who share its mission to advance education, economic opportunity, and quality of life in South Carolina.
- **Pioneer Institute** empowers Americans with choices and opportunities to live freely and thrive. Through expert research, educational initiatives, legal action, and coalition-building, Pioneer Institute advances human potential in four critical areas: K-12 Education, Health, Economic Opportunity, and American Civic Values.
- **Pioneer New England Legal Foundation** is a public-interest law firm whose mission is promoting open and accountable government, economic opportunity, freedom of speech, freedom of association, and education opportunities across the country, through legal action and public education.

- **The Platte Institute** is a nonpartisan organization whose mission is to advance policies that remove barriers to growth and opportunity in Nebraska.
- **The Rhode Island Center for Freedom & Prosperity** is Rhode Island's leading free-enterprise public policy research and advocacy organization dedicated to providing concerned citizens, the media, and public officials with empirical research data, while also advancing market-based solutions to major public policy issues in the state.
- **The Virginia Institute for Public Policy** is an independent, nonpartisan, education and research organization committed to the goals of individual opportunity and economic growth.
- **The Washington Policy Center** is an independent, nonprofit think tank that promotes sound public policy based on free-market solutions.