UNITED STATES DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE

PUBLIC HEARING ON PROPOSED REGULATIONS

"GUIDANCE UNDER SECTION 6033 REGARDING THE REPORTING REQUIREMENTS OF EXEMPT ORGANIZATIONS"

[REG-102508-16]

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P R O C E E D I N G S

(10:00 a.m.)

MS. JUDSON: This is public hearing on REG-102508-16, proposed Treasury regulations on guidance under 6033 regarding reporting requirements of exempt organizations.

Good morning and welcome. I am Victoria Judson, Associate Chief Counsel, Employee Benefits, Exempt Organizations, and Employment taxes.

We have 16 schedule speakers for today. The list of speakers was handed out at the front and speakers will come up in the order listed, which is the order in which we received the request to speak. We also had a list by the table at the entrance to the hearing room in which people could sign up to speak, but only if time permits. And I'm hoping that someone shortly will bring me that list.

Thank you. So we have one additional speaker. In accordance with the procedural rules that we use for this type of hearing, each speaker will have up to 10 minutes to present his or her oral comments on the regulations. There is at the podium a counter that counts back down, from 10 down, and a little light comes on when there's 1 minute left. Let me warn folks that the bigger light that the audience can see is not functioning, but there is a teeny light that you can see. We will announce when 10 minutes has elapsed and we really would appreciate if everyone would try to stick with those time limits so that everyone has an opportunity to speak today who signed up prior to the hearing.

The panel with me consists of representatives of Treasury and the Office of Chief Counsel. Our role today is really to listen, so please don't expect me or panel members to respond to any comments. That's not our role today. We do that in the final regulations. We may ask questions to better understand something and, if so, that time is not counted against the 10 minutes that each person has. But we will probably keep our questions to a minimum in order to ensure that everyone has an opportunity to speak today.

The hearing will conclude at 1:30. We did not plan to take any formal break. Should some members of the panel need one, we might take a brief break, but we do have escorts and people are free to the restroom and to come back again.

Thank you again for participating today, and we look forward to hearing your comments.

Before we begin hearing from the first speaker I'd like to have today's panel members introduce themselves, starting from furthest to my left.

MR. DeJONGE: Good morning, my name is Nathanael DeJonge and I'm a General Attorney with the IRS Office of Chief Counsel and Exempt Organizations Branch 3.

To my right is Mike Repass, who is a Senior Technician Reviewer. He just had to step out to cough. And he is an Exempt Organizations Branch 3 as well.

MR. JACINTO: Good morning, my name is Jarrett Jacinto. I'm an Attorney Advisor with Treasury's Office of Tax Policy.

MS. COOK: Hello, I'm Janine Cook. I'm the Deputy Associate Chief Counsel in the Employee Benefits, Exempt Organizations, and Employment Tax Office.

MS. JUDSON: Thank you very much. Before I call the first speaker, I apologize in advance should I mispronounce anyone's name. And, if I do so, please correct it when you come up to the podium.

And our speaker is Noah Wall representing FreedomWorks Inc.

Mr. Wall?

MR. WALL: Good morning, my name is Noah Wall and I'm the Vice President for Advocacy for FreedomWorks Inc., a 501(c)(4) grassroots organization.

Thank you for allowing me to testify today regarding the guidance under Section 6033 regarding the reporting requirements of exempt organizations, which is a proposal to eliminate the Schedule B, donor disclosure requirement, for non 501(c)(3) exempt organizations.

FreedomWorks strongly supports the adoption of the proposed regulation. My organization works with civic volunteers and donors from around the country who work for change on how Washington, D.C. conducts the business of governing the country.

The FreedomWorks Mission Statement reads "FreedomWorks works to build the Nation's largest volunteer grassroots community fighting for economic freedom and personal liberty in order to preserve the blessings of a free market system for our children and grandchildren." By the very nature of our mission, our activists and donors are adversarial to the powers that be in Washington based on our core values, not based on party affiliation.

We actively opposed many Obama era proposals, from Obamacare to regulations at the EPA and many other policies that we believed were antithetical to FreedomWorks' mission.

Today we are working on opposition to President Trump's proposals to enact price controls on prescription drugs. We mobilized around and in support of our Mission Statement ad its principles of economic freedom and personal liberty. Those are not popular principles in the Nation's capitol and we know we are always fighting the giant Washington power structure. That is the nature of our mission.

Our volunteers and donors are not just skeptical of the Federal Government and the government power over the lives of our citizens, but they are also, to be frank, fearful of it.

Others testifying today may mention the IRS targeting scandal under the leadership of former IRS Director of Exempt Organizations, Lois Lerner. Our activists were very much victims of that targeting by the IRS because we believe that it was a government agency's effort to silence citizens who opposed the Obama Administration's policies. Those who were not touched directly by the targeting scandal are nevertheless nervous of that clear abuse of power by the IRS. And while the over-targeting efforts may have subsided, the mistrust of the Agency continues in the hearts and minds and memories of many of our activists and donors.

Those fears are without foundation, not only because of the targeting of the Tea Party and conservative groups. We believe that there is a culture within the IRS that gives rise to fears of retribution against those who hold views that may not coincide with the powers that be within the Agency.

My background prior to joining FreedomWorks was working on Republican political campaigns in Virginia, including the campaign for Attorney General Ken Cuccinelli in 2009. Our campaign had at least 10 donors employed by the IRS. Without exception, these 10 individuals gave contributions in amounts below the Virginia disclosure limit. When I asked one of these donors if he would give at a higher level he told me in no uncertain terms that he was intentionally keeping his contributions below the disclosure amount because he would face retaliation from IRS coworkers if his donation to the GOP nominee was disclosure.

That is a frightening thought, and it speaks directly to the very real and chilling effect that donor disclosure has on individuals. It also reveals perceived culture within the IRS of harassment of those who give to candidates and causes disfavored by IRS leaders and employees.

The mere potential within the IRS for retaliation against donors based on a bias against those donors' political or policy views is disturbing beyond words and reflects a very serious problem within the IRS that demands attention and should be addressed. And it is another reason why the Schedule B list of donors to conservative organizations, such as mine, should not be required to be turned over to the IRS, ever.

FreedomWorks therefore strongly supports proposed regulations which would eliminate donor disclosure requirement for non 501(c)(3) organizations. FreedomWorks is not required under the statute to disclosure our donors and we should be relieved of the current obligation imposed by administrative fiat to file to file a Schedule B. Congress did not see fit to require donor disclosure for organizations such as ours and those regulations should be adopted in order to ensure that there is no doubt going forward no further donor disclosure will be necessary.

We believe this regulation is in keeping with the effort by the Trump Administration to repeat burdensome regulations, in fact is supported by the work of past commissioner of the IRS, John Koskinen, when he advised the Senate Judiciary Committee in 2015 that the Agency was reviewing the Schedule B requirements to determine whether this filing burden on the taxpayers was justified.

FreedomWorks believes that the Schedule B is an unjustified and unjustifiable burden on taxpayers to produce lists of donors to the IRS, which is then responsible by law for maintaining the confidentiality of the Schedule B information. There is simply no public policy reason for FreedomWorks and other citizen organizations to disclose our donor information to the government. Any audit of a 501(c)(4) organization will allow the IRS access to that group's donor information where it is necessary for tax administration related to that particular organization. But that Agency will be able to obtain the information in a setting that ensures confidentiality, is narrowly targeted for a specific purpose, and is much less likely to result in advertent disclosure of confidential information.

Those who argue that there is some dark money issue related to Schedule B filings ignore the reality that the disclosures on the Schedule B are confidential by law. Their false arguments that filing a Schedule B somehow contributes to transparency are baseless.

For all of these reasons FreedomWorks Inc. supports the proposed regulations and urges its adoption in final form.

Thank you.

MS. JUDSON: Thank you. Next Ryan Morrison from the Institute for Free Speech.

MR. MORRISON: Thank you, Associate Chief Counsel Judson.

My name is Ryan Morrison and I am an attorney with the Institute for Free Speech. We are a 501(c)(3) organization that promotes the rights of free speech, assembly, and petition. Thank you for the opportunity to speak today.

The Institute supports the proposed rule change to update the information reporting regulations under Section 6033. The rule change is an important step to protect the privacy of American citizens exercising their First Amendment rights of free speech and association. And it does so without compromising the IRS's mandate to enforce Federal tax law. The IRS should be commended for this action.

Compelled disclosure of donors to civil society groups offends the first amendment. Since the Civil Rights era, the Supreme Court has held that unjustified government scrutiny of the membership rolls of private organizations is inconsistent with the rights of all Americans to pursue their lawful personal interests privately and to associate freely with others. As the Supreme Court has acknowledged, compelled disclosure in itself can seriously infringe on privacy of association and belief, which are guaranteed by the First Amendment.

Whether people assemble to advance political, economic, religious, or cultural matters, state action that may negatively affect the freedom to associate is subject to the closest scrutiny. After all, an individual's freedom to speak, to worship, and to petition the government for the redress of grievances cannot be vigorously protected from state interference unless the freedom to engage in a group effort to promote these interests is also guaranteed.

Plainly, the IRS does not need donor information from Schedule B to enforce tax law. This has been acknowledged by multiple IRS officials, including the commissioner and the taxpayer advocate. And enforcing laws against self-dealing, fraud, embezzlement, and the like, are important government interests, but they can be achieved with other Form 990 schedules that provide detailed views of potential conflicts of interest, payments to officers and directors, organizational finances, and descriptions of any in-kind property contributed. Moreover, as the IRS acknowledges, it can obtain any additional information it needs to enforce the tax code through its ordinary investigatory process instead of requiring annual reporting of sensitive donor information by every organization.

Ending compelled donor disclosure is also wise for prudential and practical reasons. The IRS cannot legally disclose sensitive contributor information to the public. Therefore, amending the regulation does not decrease the amount of publicly available information.

Changing the rule also removes an unnecessary burden on the IRS to protect private donor information. The fiscal 2019 annual assessment of the IRS's information technology program reported that the IRS had problems maintaining the privacy of taxpayer data. The report determined that "taxpayer data will remain vulnerable to inappropriate and undetected use, modification, or disclosure until all areas of the IRS security program are fully implemented in compliance with the requirements of the Federal Information Security Modernization Act of 2014." Even accidental disclosure is catastrophic because once information is public, it is public forever.

Our current polarized political environment makes this even more dangerous. Partisans target and vilify their opponents. As recently noted by a Federal Judge in New Jersey, we are living in a political climate where people are losing employment and being ejected or driven out of restaurants while eating their meals because of their political views. And the internet has removed any geographic barriers to harassment of others.

The IRS should safeguard the privacy of donor information when individuals and politically and socially active groups are seeking that information to deter contributions to their ideological opponents.

The best way to protect freedom of association and belief is to avoid collecting the sensitive information in the first place. Put simply, lifting the burden of collecting information from Schedule B decreases the likelihood of donor exposure. The IRS should collect only information that it needs to enforce the tax code. Along these lines, everyone should remember that Schedule B is a tool for the administration and enforcement of the tax regulations, not campaign finance laws. Schedule B is not a substitute for reports filed with the Federal Election Commission or state equivalents. Congress created an expert agency to handle campaign finance disclosure. Accordingly, the IRS should leave these matters to the FEC.

Contrary to what some commentators claim, the rule change will not allow foreign spending in our elections or otherwise encourage unlawful meddling by non U.S. citizens. The tax code is designed for collecting revenue, not counter espionage. Because of strict privacy controls in the

tax code, the IRS generally cannot provide donor information to other agencies. Accordingly, government law enforcement obligations are unaffected.

Even if the IRS could readily share information with defense and law enforcement agencies, Schedule B has limited utility for detecting the methods that foreign agents use to sway our elections. Retaining the rule will not stop the type of foreign interference seen in the 2016 elections. Russian online activity was predominantly conducted with free social media accounts and a handful of ads on Facebook and Twitter. We know Russians stole the identity of Americans to further these activities and those responsible have been indicted for doing so. Consequently, it is hard to imagine how the IRS Exempt Organization Division will discover foreign activity before the national security officials do.

Plainly, Schedule B is a terrible tool to fight foreign intelligence services and the IRS is not equipped to investigate every donor listed on a Schedule B.

In conclusion, the proposed rule change values American's rights of freedom of speech and associational privacy. It is appropriately tailored under the First Amendment. It relieves the burden of the IRS to safeguard the privacy of nonprofit contributions without compromising the Agency's tax enforcement mission. And it does not interfere with campaign finance law and enforcement efforts of other government agencies.

The rule should be adopted. Thank you.

MS. JUDSON: Thank you. Hans A. von Spakovsky, the Heritage Foundation.

MR. VON SPAKOVSKY: Thank you very much and you get five points for getting my name exactly right. (Laughter)

Associate Chief Counsel Judson, thank you very much for holding this hearing, particularly because this allows the associations, the nonprofits, and the individuals that will be affected by this rule change to tell you why this is a very good idea.

The IRS should follow through with this change and ensure that, as the regulations says, you know, only 501(c)(3)s and 527s will be required to provide the names of their donors. Hopefully Congress will even change that and get rid of that requirement.

Because the donations to these other organizations are not tax deductible, the IRS has no need for this information. Not only does it needlessly increase compliance costs for nonprofits, but such disclosure to the IRS of donor information is not required to enforce Federal law. The vast majority of nonprofits, the associations that Alexis de Tocqueville in his famous 1835 book, "Democracy in America" said of Americans' participation in the social, cultural and religious life of this country operate on shoestring budgets. Such needless compliance costs make their great work even more difficult. Compelled disclosure contributions made by Americans and nonprofit membership organizations also violates their privacy, and their First Amendment rights of free speech and association.

The U.S. Supreme Court first recognized dispensable in 1958 in NAACP v. Patterson, but the Court emphasized it again in 1976 in the seminal campaign finance case Buckley v. Valeo when it said, "The compelled disclosure quote can seriously infringe on privacy of association and belief guaranteed by the First Amendment."

There is more than sufficient information. In the IRS Form 990 filed by nonprofit organizations that the IRS can use to enforce Federal tax laws, including any issues regarding conflict of interests, Payments to officers and directors, the amount of contribution received, the purposes of expenditures, by the non-profits, et cetera.

Further information about a specific organization when the IRS needs it can be obtained through the usual and customary IRS investigative and audit process.

In other words, you don't need blanket collection of this information from all nonprofits, the overwhelming majority of which are law-abiding organizations that use their best efforts to comply with all IRS requirements.

The donor information that you're currently collecting is private anyway and has to be under Federal law 826 U.S.C. 6104(b), collecting and storing that information risks inadvertent or intentional disclosure by the IRS personnel and are thus a direct violation of Federal law.

The danger that poses is illustrated by the fact that the IRS paid $50,000 in 2014 to settle a lawsuit by the National Organization for Marriage after one of the IRS clerks disclosed this confidential donor information to a human rights campaign, an adversary of NOM, which used that information to harass and to try to embarrass NOM's donors.

If you think that such harassment won't occur, you are wrong. Those who hold views out of line with political correctness, or whatever the current political and social orthodox is, like me, are subject to harassment because of our views.

Donor information can also be disclosed through cyber attacks on government databases, such attacks occur on a regular and frequent basis, and are a serious substantial risk as demonstrated by the 2015 data breaches at the Office of Personnel Management which resulted in the personal and background records of over 25 million current and former employees being stolen in two separate incidents, including me. I am one of the former Federal employees who received a warning letter from OPM.

The IRS should not be needlessly endangering the public by this information. That risk of disclosure will not exist if this donor information, which is not required by statute, and is not necessary for your proper administration of the tax laws, is warehoused by the IRS to even begin with.

The fact that some state governments are asking the IRS to retain this requirement is no reason for the IRS to continue it since the purpose of the IRS is to enforce Federal tax law, not State tax law, and your objective is to collect Federal tax revenues not State tax revenues.

State governments are responsible for their own enforcement of their own state laws, with regard to nonprofits operating in their states, not the IRS. And we know why some states, like New York which has a notorious reputation for partisan, politically-driven law enforcement investigations and prosecutions, want this information. It is not for legitimate enforcement of their state tax laws.

This donor information is also not required by the IRS for enforcement of Federal campaign finance laws which is the responsibility of the Federal Election Commission which enforces civil violations, and the Justice Department, which enforces criminal violations. I know because I served as a Commissioner at the Federal Election Commission for two years. You should resist the push from so-called Campaign Finance Reform organizations whose real interest is chilling the voices of those whose views they despise and drying up the resources of the organizations they don't like to get the IRS into enforcing campaign finance laws.

But their claim that this will somehow allow foreign money to suddenly flood into American elections is absurd. When I was at the FEC we enforced the Federal law and the IRS regulations prohibiting foreign money in Federal elections and we did not need the help of the IRS to do that.

Alex Kopal said this about Americans in what he called their moral and intellectual associations which are the nonprofits, we are talking about here today, "If it is a question bringing (inaudible) or developing a sentiment with the support of a great example Americans associate. The IRS should not be collecting confidential information from these associations that is not statutorily required, is not needed for enforcement purposes, particularly when such information infringes the First Amendment Rights of Americans to freely contribute to the members of and associate with non-profit organizations whose purposes, sentiments and work they support." Thank you.

MS. JUDSON: Thank you. Next, Jenny Beth Martin of the Tea Patriot Patriots Action.

MS. MARTIN: Ladies and gentlemen, thank you for the opportunity to share my thoughts on your proposed regulation to revise guidance under Section 6033 regarding the Reporting Requirements of Exempt Organizations. As Honorary Chairman of Tea Party Patriots Action, a 501(c)(4) social welfare organization and cofounder of Tea Party Patriots, I've had some experience dealing with the IRS Reporting Requirements.

The targeting of Conservative groups and Tea Party groups, and groups with Tea Party and Patriots in the name, by the IRS during the Obama administration was real. I dealt with it over several years with the Tea Party Patriots and with many, many dozens of smaller organizations nationwide.

Anyone who says the targeting was not real just doesn't know what he or she is talking about. Ever since the IRS targeting began grassroots activists all over the country have confronted me regulatory. They approach me with IRS letters and forms in their hands, shaking, asking me if they or their group was targeted because of their political beliefs.

To this day, I still get activists who approach me, and share their personal stories of fear and intimidation at the hands of powerful government bureaucrats. A study by the House Ways and Means Committee released in 2014 revealed that donors to Tea Party Groups were 10 times more likely to be personally audited than those who had not donated to Tea Party Groups.

The Donor Disclosure Requirements of Schedule B have made it more difficult to raise funds since then, because the resulting fear of many donors of potential retaliation and individual targeting by the IRS. Donors know if they — they know their names are going to be disclosed to the IRS if they give $5,000 or more, and that gives many donors pause, even though as Schedule B is not a public document, donors know they are putting their names on a government list as a supporter of a conservative organization.

It is a simple fact of life that in order for a group of citizens to exercise its First Amendment Right to free speech, they have to join together to raise funds. Even for small groups of people, just renting meeting space, and purchasing required insurance may require the need to form some sort of IRS entity.

The people in my groups, they want to obey the law and do the right thing. When you're communicating a message to a nation of 330 million people, it's an expensive proposition. Government regulations that make it more difficult to raise the funds necessarily abridge citizens' abilities and therefore their rights to exercise their free speech and association.

And that brings us to today's discussion. The issue here is quite simple, you propose to do away with the current requirement that organizations such as ours file with our annual tax return as so-called Schedule B, a piece of paper that lists on it, the names and addresses of everyone who donates to us at least $5,000 per year.

It's important to note that there is no law that says that our organizations must file that piece of paper with names and addresses of our major donors on it. Congress limited its attention as such filings coming from 501(c)(3) organizations, but issued no such mandate for filings by 501(c)(4) organizations, like mine.

That mandate, the mandate we're discussing today, that was born in the bowels of the internal revenue service, acting on its own. Congress did, however, mandate other things about our organization's tax returns. By law, that piece of paper with the list becomes part of our return, and by law, that piece of paper with the list may not be shared publicly, and yet, on previous occasions, exempt organizations donors' list have been made public by the IRS in violation of the law to the great detriment of the organizations and their donors.

And here is the terrible part, that piece of paper with the list of names and addresses, according to public statements in 2016 from former IRS Commissioner, John Koskinen; and Exempt Organization Director Tamera Ripperda, does not aid the Internal Revenue Service in the administration of the tax code.

In fact, these said the IRS was considering eliminating Schedule B, during a requirement entirely, because there was no legitimate purpose or reason to require that information from any

organization. So under the current regulation, you're now requiring social welfare organizations like mine to file a piece of paper you don't need, in a manner not required by Congress in the first place.

In this piece of paper — and this is a piece of paper your own statutes required to be kept confidential, which you've acknowledged you haven't always been able to ensure in recent years. The solution is simple, stop requiring us to file our donors' names and addresses every year, that way you won't have to worry about maintaining the confidentiality of that record, because you will not have that particular record, and neither will the zealous state officials who are demanding they receive copies of our donor records.

These state officials certainly are not friendly to conservative organizations like mine. And while you're at it, I recommend that you advise Congress to do away with the reporting requirement for 501(c)(3) organizations as well.

The same reality applies to them, as applies to organizations like ours. You don't need the piece of paper to properly administer the tax code, and creating it — and having it creates a possibility that you could accidentally release it in violation of the law. So why take that chance?

Tea Party Patriots Action strong supports the proposed regulation that would end he unnecessary and inappropriate collection of donor information from our 501(c)(4) organization, and other non-501(c)(3) groups.

We urge the final approval of the proposed regulation. We further urge the IRS to advise Congress that it should repeal the Schedule B donor requirement for 501(c)(3) organizations as well. Thank you very much for your time and your consideration.

MS. JUDSON: Thank you.

MS. MARTIN: I have a copy of what I presented here, may I leave that with you then?

MS. JUDSON: Certainly.

MS. MARTIN: Thank you.

MS. JUDSON: James Bopp, Jr., of the James Madison Center for Speech.

MR. BOPP: Good morning. And thank you very much for the opportunity to testify. I'm General Counsel for the James Madison Center for Free Speech, we advocate for the First American Protections that guarantee to the right of the citizens to participate in our political process. We speak here in favor of the proposed rule, that (c)(4) (phonetic) donor information will no longer be required to be provided to the IRS. We commend the Services for proposing this proposed rule.

First I want to state with the context. When we talk about (c)(4) groups, we are talking about groups that advocate for public policies for governmental action. They do that through education,

through lobbying, and what they attempt to do is to accomplish by the result of those actions governmental policies that they support.

Of course the promotion of issues, not just candidates, but issues, is at the core of the First Amendment protections as the Supreme Court made clear in the *McIntyre* case. And therefore these groups are performing First Amendment, core First Amendment activities.

Second, the First Amendment protection that is afforded these groups, involve of course as the court as often said, the four indispensable democratic freedoms, which encompass, as the Supreme Court held in *NAACP*, the right of political association.

So, when a group joins a group such as, an advocacy group such as the NAACP, they are — joining of that group whether it is by membership as in *NAACP*, or as the court later recognized in *Buckley* contributing to that group, that they are participating in a core First Amendment protected activity of political association.

And of course the Court in *NAACP* recognized that it's hardly novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute an effective restraint on First Amendment association. And of course that has proven to be true, both as a constitutional injury and as a practical realization of events that have occurred throughout our recent history.

So, when the service looks at adopting this provision in a final rule, they should look at the full panoply of injuries that actually occur as a result of the disclosure of that information. And that is the gravity of the injury that occurs.

Well, first there is a constitutional injury that is irreparable and therefore worth all the money in the world, and that is that compelled disclosure of information from private organizations of those who participate with them, chilled participation in those private organizations, and as a result diminish the effectiveness of those organizations. The result is chill of First Amendment protected activity.

So, if just simply one ad is not run advocating the adoption of a passage of a particular law, just that one — failure of that one ad to run because donors are discouraged from contributing to the organization results in irreparable constitutional harm.

The second, of course, is personal injury. And there are actually two types. The first is to individual donors as a result of government and government employee retaliation. And of course we have seen this on a bipartisan basis over the years. Nixon had illegally accumulated confidential income tax information of political opponents for his use, to punish for government employees, and people to punish these individuals. Then, of course, Nixon was able to get the IRS to engage in tax return and other investigations of potential opponents, and this is all the government retaliating.

We of course saw President Clinton illegally had 1,000 FBI files of political opponents at the White House, which no doubt included confidential employee income tax information. And then we of course have the Lois Lerner scandal which was actually initiated on a bipartisan basis,

even though it targeted conservative and Tea Party Groups, where we had Chief of Staff of Senator John McCain meeting with IRS officials urging the Exempt Organizations branch to launch investigations and audits of Tea Party groups, and supporting their unconstitutional and discriminatory attacks on the applications of (c)(4) organizations. So that according to McCain staffer, but would exhaust the time and resources of these groups that he opposed.

But there is also public disclosure and public disclosure results in harassment and intimidation by members of the public against donors to organizations with whom they disagree. Now that public disclosure has occurred throughout our history. Well, the most probably classic example of that and it has been on a bipartisan basis as the winds, you know, blow one way and then blow another.

The Socialist Workers Party was one of the first groups to obtain a constitutional exemption from reporting their donors because of the demonstrated history of harassment and intimidation of their donors and they had that exemption up until 2016.

But of course we have and in the most well documented and exhaustive investigation ever done and documentation of a history of a particular campaign of retaliation against donors is the examination, the documents accumulated by my law firm with respect to California Proposition 8 in 2008.

There after the surprise adoption of the traditional marriage amendment to the California constitution in 2008, the — there was a concerted campaign of retaliating launched by groups that supported same-sex marriage, which targeted the donors of Protect Marriage, which was the California political committee required to be established under California law to support proposition the — any proposition and in this case, Proposition 8.

The way that campaign was conducted is they took the reported names, home addresses, amounts, employer and employee information provided in those reports, put them on multiple websites and most aggressively and concerningly, MapQuested the — each individual donor and then urged people to go to their homes in order to confront them. And of course the result was that's exactly what occurred.

We were able to document in our submission in the lawsuit *ProtectMarriage.com v. Bowen*, in our statement of undisputed facts of 59 pages — which is submitted to you as part of the record — we were able to document over 257 documented instances in which individuals were subject to varying forms of harassment and intimidation, including illegal acts directed against them, being fired from their jobs, having the businesses that they worked for, maybe as a waitress or as a cook, being targeted, and black listed and boycotted and it went on and on and on and on.

We were able to obtain affidavits from numerous members of these victims of this concerted campaign of harassment and intimidation. And of course that has lived on. That campaign, the results of that campaign, has lived on as people are fearful in future cases after 2008 to associate with the Protect Marriage group.

MS. JUDSON: Well —

MR. BOPP: This is the reality of the disclosure of this information and we urge you to adopt the final regulation. Thank you.

MS. JUDSON: Thank you very much. Ryan Mulvey of Americans for Prosperity.

MR. MULVEY: Good morning and thank you for this opportunity. My name is Ryan Mulvey and I'm counsel for Americans for Prosperity, a 501(c)(4) organization that recruits, educates and mobilizes citizens in support of the policies and goals of a free society at the local, state, and federal levels.

AFP works to help every American live their dream and it believes that transparency, balanced with robust protection of First Amendment rights is an ideal approach to promoting civic engagement and the continued social progress it makes possible.

AFP will be directly impacted by the IRS's proposed rule, eliminating the requirement under Section 6033 of the code that many tax exempt organizations annually disclose private donor information on Form 990 Schedule B. For the reasons that are in our written comment and reasons which I'll address over the next several minutes, AFP strongly supports the proposed rule and urges its finalization.

As other proponents of the rule have already explained, and I'm sure will continue to explain, the compelled disclosure and warehousing of private citizen information raises constitutional concerns because it tends to chill Americans' exercise of their First Amendment rights regardless of political affiliation or philosophical commitment. This is a nonpartisan concern.

The mandatory reporting of the names and addresses of contributors is a strong disincentive for Americans to organize around their deeply held beliefs, especially in an increasingly divisive society where marginalized voices need strong speech protections.

Past instance of unauthorized disclosure of donor information as well as the mismanagement of confidential tax information by state regulators showcases the harassment, intimidation, and embarrassment that Americans can face when their private affiliations are made public. These threats are not hypothetical.

During the 2012 presidential election, an IRS official allegedly leaked the National Organization for Marriages donor information to a political opponent which then used that information to intimidate donors.

AFP supports too have faced harassment when officials have made their private information publicly available. Repercussions have ranged from threats to kill or maim to boycotts, firings and public shaming.

Leaving supporters exposed to intimidation is a threat across the ideological spectrum. Recently, the California Attorney General's office admitted to inadvertently posting confidential Schedule B's from groups like Planned Parenthood which has voiced opposition to government efforts to obtain donor information along with LGBT advocacy groups.

The American Civil Liberties Union, its various chapters and affiliates, and other center left groups also have described experiences with publicly identified members becoming subject to various types of harassment, including community hostility, protests, anti-Semitic verbal assaults, threatening correspondence, doxxing and even intimidation by armed, would be assailants.

They have highlighted these threats in lawsuits against New York and New Jersey, challenge state level disclosure requirements. And at the federal level, the ACLU has described the dangers of broad disclosure mandates which threaten to unconstitutionally infringe on the freedom of speech and the right to associational privacy.

As the ACLU has urged, broad reporting requirements impinge on the privacy of donors forcing groups to make a choice, their speech or their donors. Whichever they choose the first amendment loses.

Unsurprisingly, most supporters insist that their information be kept private. Confidentiality safeguards trust and more importantly ensures the personal safety of contributors and their ability to continue to join with other Americans who share their beliefs.

The IRS's proposed rule is a helpful step toward achieving these goals. Moreover, it will help protect the free and open exchange of ideas that enrich our public discourse by diminishing the likelihood of intimidation of Americans simply for supporting a cause they believe in, the IRS can foster opportunities for people to organize together to share and to debate ideas.

The status quo of detailed Form 990 Schedule B reporting discourages democratic participation. The proposed rule by contrast will produce robust engagement in civic life and the exercise of free speech and association.

Along with these constitutional considerations, it's important to remember that the collection of donor information in most instances is not necessary for tax administration at the federal level and it will not impede state tax and charities regulators.

As the IRS itself has observed, the bulk of information contained on Schedule B is not needed to carry out the agency's core statutory responsibilities — revenue collection and the prosecution of tax fraud. To the extent it became needed, the IRS could always obtain it through standard investigative or enforcement mechanisms.

We should also keep in mind that Congress only explicitly requires the collection of donor information from 501(c)(3) entities.

The proposed rule simply eliminates a disclosure requirement that the IRS was never statutorily obliged to impose in the first place.

The current reporting regime imposes compliance costs on exempt organizations, costs that for smaller entities could be burdensome, and it redirects valuable agency resources away form more pressing matters that Congress intended the IRS to address.

Contrary to what some commenters have suggested, the IRS would do best to focus on the enforcement of the tax code. The proposed rule strikes a reasonable balance in meeting the IRS's statutory obligation while avoiding the discretionary warehousing of private citizen information from nonprofit membership or social welfare organizations.

That warehousing serves no compelling tax purpose. Taken together, the constitutional concerns of chilling protected speech and association and the dangers stemming from inadvertent or improper disclosure of donor information far outweighs any minimal value in the continued collection of personal data on Schedule B.

Finally, AFP would like to emphasize that the proposed rule does nothing to restrict public access to information about tax exempt entities. Section 6103 of the code establishes a general rule of privacy for individual tax payers. Donor information is not subject to Section 6103's limited exceptions and it is not available under the Freedom of Information Act.

Although section 6104 permits public inspection of annual returns, donor information generally remains confidential. Transparency is good for government, and individuals have a right to privacy. They have a right to support causes, join groups, make donations, and express themselves without being monitored by those in power and without being subject to intimidation by their political or philosophical opponents.

Such privacy makes it possible for everyday people to take courageous stands to drive social progress. Eliminating the Schedule B reporting requirement raises no legitimate concerns about transparency but it does advance individual privacy and free expression. This is another reason to support finalization of the proposed rule.

Thank you again for the opportunity to provide this testimony. Again, AFP supports the IRS's efforts to reform Section 6033 and it respectfully requests that the IRS finalize the rule at issue. Thank you.

MS. JUDSON: Thank you. Carol Platt Liebau of Yankee Institute for Public Policy.

MS. PLATT LIEBAU: Good morning. Good morning. My name is Carol Platt Liebau and I'm president of Yankee Institute for Public Policy. Thank you for making time to hear me this morning.

In Yankee Institute's work, we develop and advance policies that promote smart, limited government, fairness for taxpayers, and an open road to opportunity for all the people of Connecticut, which not coincidentally is known as the Constitution State.

In the Constitution, as you know the First Amendment guarantees every Americans right to free speech. Inherent in that right, is the freedom to support the causes one believes in.

For Yankee Institute's supporters, it is incredibly important that they're able to support our cause privately, and here is why. A key part of Yankee Institute's work focuses on the outsized power of our state's dominant special interest, government unions.

We point out truths that make union leaders uncomfortable. For example, the fact that state employees in Connecticut make an average of 25 to 46 percent more than private sector workers with similar education and work experience and that Connecticut state workers have the highest average pension in the nation.

And that the speaker of Connecticut's House of Representatives is actually a full time paid employee of AFSCME, that is, the American Federation of State, County and Municipal Employees, and that he nonetheless votes on the contracts that will govern his own and other unionized government workers' compensation.

Yankee Institute is the only one doing this work in Connecticut. We make a lot of powerful people extremely unhappy. I myself am not terribly popular in certain quarters. In fact, my family has been subjected to protracted state tax audits for two consecutive years.

But our work has sparked meaningful reforms that benefit hardworking people across our state, and those people count on us to serve as their eyes and ears at the capital and all across Connecticut, and that is why they support us.

But because of the very problem Yankee Institute highlights — the dominance of government unions and the existence of their employees in high and influential positions in government — many who support us can do so only because that support is private.

The government unions in Connecticut play rough. In one case, disadvantaged parents in Hartford who had criticized the teachers' union were suddenly hit with anonymous child neglect complaints to DCF, the Department of Children and Families. They spoke out, were identified, then targeted for harassment.

In other cases, government unions and the government union funded political party, the Working Families Party, have protested outside private residences using bullhorns or come to their targets' workplace seeking to create embarrassment by engaging in street theater like blowing up a giant inflatable pig.

These tactics obviously are intended to intimidate and embarrass. No one subjected to them would be likely to want anything to do with Yankee Institute.

Make no mistake. Public disclosure sounds innocuous but what it really means is that names, addresses, and other personal information are collected by the government and made publicly available.

If that happened, I wouldn't blame thousands of Yankee Institute supporters if they decided the physical risk and social cost were simply not worth it. In Connecticut, those taking a public stand against government unions can pay a steep price.

But then Yankee Institute would have to close its doors and the government unions' dominance would continue to flourish and even grow completely unchecked. That would hardly constitute a victory for good government.

Those who push for public disclosure claim they want to get money out of politics. But our work is nonpartisan and we raise issues and drive reforms that otherwise get short shrift in a landscape where a special interest with so much power and money can simply dominate the political system.

And it isn't just Yankee Institute supporters who would suffer under a public disclosure regime. Whatever their beliefs, all Americans should be able to support specific groups or positions without fear, retaliation, or harassment.

People nationwide suffered with the parents of Sandy Hook, Connecticut, when their little ones were currently murdered. Some of those families formed a gun control group, Sandy Hook Promise.

Grotesquely, these grieving Sandy Hook Promise families faced threats and harassment from deranged gun rights absolutists, including public accusations that they were liars and actors playing parts in an Obama-orchestrated scheme to curtail gun rights.

Can you imagine what might have happened if their names, addresses and other personal information had been collected by the government and made publicly available?

At Yankee Institute, we believe in transparency. We even created a website, CT Sunlight, to document government salaries, pensions and other information for Connecticut's taxpayers.

But as important as openness and transparency are, there must be a limiting principle. These goals cannot be achieved at the cost of personal safety. And unfortunately, these days there are far too many people who are committed to achieving their political goals through intimidation rather than persuasion.

Rooting out corruption in government is of vital importance. But the way to do it is by reforming government, not through chilling free speech by abridging an individual's constitutional rights to advance the values he or she believes in. Transparency is for government. Privacy is for people.

Finally, just a word about the IRS. As someone who herself isn't always popular in her home state, I have a great deal of fellow feelings for hardworking people at the IRS who sometime perhaps aren't always embraced with a great deal of enthusiasm by America's taxpayers. Their job isn't easy. The mission of the IRS, as you know better than I, is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and enforce the law with integrity and fairness for all. That, in itself, is no small undertaking, without adding additional responsibilities. Nowhere in that mission statement is there anything about collecting personal information and keeping lists of which American citizens support which causes or positions. What's more, even if adding such an obligation to the IRS's already extensive responsibilities might somehow, theoretically, reduce some sort of corruption somewhere, it would still be wrong. Asking everyone's mail carrier to inspect their letters might well reduce the incidence of mail fraud, but it would still be an unconstitutional invasion of privacy and it would still rest far outside the post office's mission.

Donations to political candidates and ballot initiatives are already reported to the government and posted on websites. Americans who choose to, or must, allow a nonpartisan, nonprofit to speak for them should be allowed to do so without risking harassment or retaliation. Abridging this right will only chill speech, silence dissenting voices, and deprive our representative democracy of the robust debate that produces an engaged, active, and informed citizenry capable of governing itself. Thank you.

MS. JUDSON: Thank you. Next, Catherine Suvari of the State of New York Office of the Attorney General.

MS. SUVARI: Good morning. My name is Catherine Suvari. I'm appearing today on behalf of the Attorney General for the State of New York. Thank you for the opportunity to participate in this hearing. Last December, our office submitted written comments opposing today's proposal in a multi-state letter signed by the attorneys general of 19 states and the District of Columbia. That letter included detailed discussion of how state offices use contributor information to ensure effective oversight and enforcement work within the nonprofit sector at the state level.

I'd like to use my time today to draw the panel's attention to particular points highlighted in that letter and to the IRS's own recent consideration of related topics. First, the change under review today is a very targeted revision to disclosure requirements for a specific subset of the 501(c) exempt sector. The change would have no effect on the reporting obligations of (c)(3) exempt groups, including those represented here today, or on 527 political organizations. Both of those groups would continue to file complete contributor information as they have for decades.

The IRS has also already concluded through its own analyses that today's proposed change will affect fewer than one percent of current exempt organization filers, and so will have no material effect on the agency's existing confidentiality obligations or donor disclosure risk. IRS staff members have also acknowledged, internally, that the current risk of inadvertent donor disclosure is extremely slight. As of summer 2018, the IRS identified only 14 such disclosures from among approximately 1.6 million Schedule B forms filed between 2010 and 2018.

The disclosure change under review today has also been proposed without any corresponding change to the exemption standards that govern operations at the affected organizations. Those organizations would simply provide less information to the regulators charged with evaluating their compliance under continued prohibition against private inurement, conflict of interest, and unlawful political activity.

A decision to stop collecting complete contributor information would, however, have a significant impact on regulatory enforcement efforts within the universe of affected organizations. As my office and others stressed in our December letter, current federal and state reporting standards operate in tandem to encourage and support compliance with the requirements for 501(c) exempt status. The IRS has long recognized that most states rely on Form 990 to perform charitable and other regulatory oversight and to satisfy state income tax filing requirements for organizations claiming exemption from state income tax.

In New York, we have adopted the 990 as our primary financial report for state-registered exempt organizations, and so collect federally-filed contributor information through our own registration processes. Complete contributor disclosure through the existing Form 990 is critical to the success of that scheme. Our office uses federally filed contributor information to review private inurement and private benefit concerns; evaluate potential violations of our statutory-related party and conflict of interest requirements; and examine donations that may conceal money laundering or other illegal transactions. The existence of confidential federal disclosures that may be resubmitted to satisfy New York reporting obligations enables our office to conduct its review with no additional expense or disclosure risks to the organizations and contributors at issue.

The state government use of federally filed contributor information, and the importance of state government interest and continued access to such information has also been explicitly recognized and upheld by the U.S. Court of Appeals in two constitutional challenges brought by (c)(3) and (c)(4) organizations. Meaningful donor disclosure requirements also serve an important secondary purpose signaling good governance expectations for the sector and focusing non-profit leadership on effective and complete financial reporting.

The IRS has proposed that current Schedule B filers affected by the new rule would continue to privately maintain the contributor information previously reported in their annual filings so that the information would be available on demand. As a practical matter, this solution can only weaken government standards within the sector. Even in limited enforcement regimes, regulation through disclosure has been shown to provide significant compliance benefit. Disclosure promotes best practices without eliminating freedom of choice at the disclosing organization, and serves as an effective and low cost device for encouraging the behavior desired by regulators.

The IRS has not identified why it would seek to eliminate this control in exchange for reduced annual disclosures that offer no meaningful cost benefit to the agency and would, ultimately, trigger increased reporting costs in the form of new state-by-state alternatives. The changes under review today would also create increased compliance risks among a category of corporations that has already been identified to the IRS as especially susceptible to abuse.

Last September the Government Accountability Office reported to the Senate Committee on Finance that audit review of abusive transactions involving tax-exempt entities had fallen by almost 99 percent between 2009 and 2017 from a total of 886 transaction audits in 2009 to 10 or less in 2017. The GAO report specifically warned by abusive tax schemes involving tax-exempt entities pose enforcement challenges for the IRS, as schemes can cross IRS's operating division areas of responsibility and evolve over time.

Last month, the Treasury Inspector General for Tax Administration reported to Commissioner Rettig that nearly 10,000 newly-formed (c)(4) organizations — the same organizations whose principal supporters would no longer be identified in a revised Form 990 filing — had failed to even notify the IRS of their existence since the 2015 passage of the PATH Act, and the IRS had no process for proactively identifying such organizations. The Inspector General's report recommended increased state and federal collaboration as a solution, and it noted that limited

funding and resources at the IRS had affected the development and implementation of the new self-reporting scheme.

The most obvious risk of potential abuse in today's proposed change has been well publicized for years. It was presented to the IRS again last September. On December 9th, 16 senators submitted a letter comment on today's proposal urging the IRS to recognize that rollback of existing donor disclosure standards will increase stark money control of policy through anonymized political activity. The senators' letter cited expert warnings that corrupting forces have already taken advantage of the fact the 501(c)(4) groups are not required to disclosure all of their donors, and that super PACS, who must disclose their donors, have begun to anonymize their supporter information by accepting money from secret donors in the form of unlimited contributions from political nonprofits like 501(c)(4) groups.

The Congressional Research Service has long-since warned of the same risks, noting in a 2013 report that the expansion of permissible corporate spending under the Federal Election Campaign Act narrow Federal Election Commission donor disclosures, and in precision in the exemption standards for a social welfare organization, have enabled (c)(4) entities to participate in elections with far less restriction in recent decades. Absent regular reporting of complete (c)(4) donor information, the IRS cannot reasonably expect to identify the revenue and spending that signal unlawful campaign activity.

In light of the limited regulatory benefit, today's proposed changes, the public reaction to the proposed rule is remarkable. The IRS has received more than 8,000 public comments on its proposal, compared with a total of approximately 120 comments submitted during the 2008 overhaul of Form 990. Many of the public comments cite overtly political interest in their support for today's proposed change and urge the IRS to protect donor privacy rights that are in no way jeopardized under their current confidential disclosure regime.

Within this context, the origin of today's proposed change remains unclear. The IRS has already attempted to implement the same change through a revenue procedure that was deemed procedurally defective under the APA in 2019. Public access to the information upon which that version of today's change was based has proven to be limited. Our office, together with the Office of the Attorney General for the State of New Jersey, has spent 15 months pursing a response to FOIA Requests concerning the changes that were first submitted in October 2018.

The exempt organization sector that our offices oversee relies on three major regulatory groups to ensure lawful operation consistent with the standards that confer tax-exempt status: The IRS, the FEC, and state regulators. Together, those three authorities developed a disclosure regime that balances recognized regulatory interest with the need for clear and confidential donor reporting standards within the sector. There is no identified benefit to the change now being proposed, either for the IRS or for the particular subset of 501(c) exempt organizations targeted by the change.

For all of these reasons, and the reasons discussed in our offices' joint letter submission in December, I urge the agency to forego this change. Thank you again for the opportunity to share our office's concerns.

MS. JUDSON: Thank you very much. Asim Mulji, Campaign Legal Center.

MR. MULJI: Thank you members of the panel for the opportunity to testify this morning. My name is Asim Mulji. Thank you for getting that right. I'm here today on behalf of the Campaign Legal Center where I work as a legal fellow on policy and litigation related to campaign finance, voting rights, and government ethics. The Campaign Legal Center is a non-partisan, non-profit organization that represents the public interest in administrative proceedings like this one by promoting the enforcement of disclosure and campaign finance laws.

The proposed rule we're discussing today discontinues the long-standing requirement that 501(c)(4) and (c)(6) organizations confidentially disclose their top donors to the IRS on Schedule B of Form 990. I'm here today to discuss how the public interest in preventing foreign influence in U.S. elections is at stake in this rulemaking. Specifically, the proposed rule makes it harder for law enforcement to detect when foreign entities use (c)(4) and (c)(6) groups to inject foreign money into U.S. elections. And at a time when the threat of foreign interference is so great, this proposed rule would only serve to make our democracy more vulnerable. For this reason, the Campaign Legal Center strongly urges the IRS not to adopt this proposed rule.

In the last 10 years since the Supreme Court's decision in *Citizen's United*, (c)(4) and (c)(6) organizations have become the main conduits of something called dark money, or money spent on U.S. elections through groups that don't publicly disclose their major donors. In the last 10 years, dark money groups, mainly (c)(4)s and (c)(6)s, have spent over $963 million on U.S. elections. And we also know that dark money can hide foreign money.

Under U.S. campaign finance law, no foreign national is allowed to make political contributions or expenditures, and no U.S. individual or entity can accept or solicit foreign political donations. But because (c)(4) and (c)(6) organizations aren't required to publicly disclose their major donors, they've become a very convenient way for foreign entities to disguise their political contributions. Admittedly, foreign contribution schemes can be hard to detect, but there's ample evidence of abuse here to be concerned.

Consider this example. In 2018, news reports revealed that a Russian banker with ties to the Russian government was in close contact with the (c)(4) arm of the National Rifle Association, including close financial ties. That (c)(4) arm of the NRA spent more than $30 million in the 2016 elections. According to news reports, these facts prompted the FBI to investigate whether any of that 30 million actually came from foreign nationals.

Consider another disturbing example. In 2016, undercover reporters from *the Telegraph*, a U.K.-based newspaper, met with representatives of a pro-Trump super PAC called Great America PAC. The reporters met with the PAC and asked essentially this: We have a Chinese businessman who wants to contribute $2 million to your PAC. They didn't have this person. He knows it's illegal; and how do we make this happen? In response, a consultant to that PAC — a man named Mr. Jesse Benton — offered the reporters a solution. He suggested the Chinese donor could give all $2 million to his consulting firm; from there his consulting firm would donate the money, in two parts, to two separate 501(c)(4) groups, which would not be publicly disclosed; and then those 501(c)(4) groups would, in turn, give the money to the Great America

PAC, and nobody would be the wiser. These examples make one thing very, very clear. The threat of foreign money coming into our elections through (c)(4) and (c)(6) organizations is very, very real.

Despite this threat, the IRS is now proposing to depart from years of good policy by ceasing to require (c)(4) and (c)(6) groups to confidentially disclose their top donors. This is a mistake. These disclosures are the only systematic information readily available to the Federal Government about (c)(4) and (c)(6) donors. And in instances where the DOJ is investigating specific organizations involved in these schemes, these disclosures can give them quick and efficient access to information about those organizations' top donors.

Likewise, when the DOJ's investigating a foreign national, this data can give them quick and efficient access to information about any illegal political giving. Importantly, these disclosures allow investigators to get this information without prematurely tipping off the implicated organizations or individuals.

Finally, Schedule B disclosures can act as a deterrent. Because of non-public Schedule B disclosures, foreign nationals, at least, have to think twice about using (c)(4) and (c)(6) organizations to funnel money into U.S. Elections. Even one of those who has testified today recently commented on a televised interview and acknowledged the potential deterrent effect of these disclosures. By removing this one remaining deterrent, the IRS is effectively inviting foreign dark money in our elections.

To be clear, we're not suggesting that the IRS should supplant the role of the DOJ and the FEC and start enforcing campaign finance laws, nor are we suggesting that these disclosures out right stop the flow of foreign money in U.S. elections. But according to a statement by Attorney General Barr and several federal agency officials back in the fall, securing our elections is a "top priority for the United States Government." If that is so, then surely the IRS can in its discretion here, and should, as an agency of the Federal Government, consider any detrimental impacts of this proposed rule on the efficient enforcement of laws that ensure the integrity of our elections.

Now, I'd like to turn to two concerns raised by the service and several commenters in this rulemaking. For some commenters claim that Schedule B disclosures are constitutionally suspect, but no case decided by the Supreme Court says that compelled disclosure in and of itself is a substantial injury to First Amendment rights. In no case, neither NAACP, nor Buckley, stands for a general right to donor privacy. Of course, a narrow, as applied exemption is provided by NAACP for groups that can show violent threats and reprisals at the level faced by NAACP members in the Jim Crow south and the National Socialist Workers' Party in the McCarthy era; and, in fact, in this case, those cases would not apply because the disclosures here are confidential and every relevant case from the Court of Appeals has held that Schedule B disclosures serve important Government interest and do not violate the First Amendment.

Second, the IRS and some commenters are worried about the risk that Schedule B information will be accidentally, or intentionally, be made public. On this point, it bears repeating that donor information disclosed by (c)(4) and (c)(6) groups under the current regime is confidential. It cannot be shared with the public — and we agree that confidential information should remain

confidential — but this is not a problem specific to Schedule B disclosures. Information on Schedule B is no more vulnerable to accidental disclosure or hacking than any other private information maintained by the IRS or the Federal Government.

To the extent that the IRS wants to protect confidential information from inadvertent disclosure or hacking, it should address these problems holistically and head-on with solutions that apply to all of the private information that the agency collects, like improved cyber-security measures and additional procedures to avoid human error.

The simple fact that private information maintained by the Federal Government is vulnerable to accidental or intentional disclosure is not a valid reason to stop collecting information that can serve an important public purpose; and, indeed, Schedule B disclosures by (c)(4) and (c)(6) organizations can serve an important public purpose, not the least of which is helping to reduce the possibility of foreign meddling in our elections.

For these reasons, on behalf of the Campaign Legal Center, I, again, urge the service not to proceed with the proposed rule. Thank you so much.

MS. JUDSON: Thank you. Next, Scott Walter, Capital Research Center.

MR. WALTER: I thank the panel for the opportunity to testify today in support of the proposed rule change. I am Scott Walter of the Capital Research Center, and in a previous administration, a special assistant to the president for domestic policy.

The Capital Research Center takes an intense interest in this rule because we are a 36-year old think tank in Washington that specializes in studying the non-profit sector. Our expertise encompasses all of the 501(c) world, including subsections 3, 4, 5, 6, 8, and more; and not just conditions in this present day, but for the last century. We publish books and studies analyzing matters as the birth of America's largest foundations in the early 1900s. And the bitter controversy brought on by the politicized giving of the Ford Foundation in the 1960s. Which drew condemnation from Congress and from observers across the political spectrum.

More form 990s and 990-PFs are read at our desks than almost anywhere else in the country outside of IRS offices. We especially study the issue of so-called dark money, a slippery term that could more honestly be translated as "support for speech I don't wish the public to hear." This loaded term was coined in 2010 by the so-called Sunlight Foundation to cast dispersions on money legally donated to 504(c)(4) organizations. It's a term popular with some groups who have provided you with comments opposing this rule.

Including even groups like the League of Women Voters that are themselves both 501(c)(4) organizations and also vigorously active combatants in various political fights over such issues as the confirmation of Supreme Court Justices. The League of Women Voters has also, according to the Center for Responsive Politics, spent hundreds of thousands of dollars annually to lobby on over 100 bills in the past decade. Bills on issues like healthcare, coal mining and tobacco taxes. A new story in Politico labeled as dark money, the League's spending in a fight over whether New York State should hold a constitutional convention.

The prejudicial term dark money also appears in the comment you received from the Campaign Legal Center which just testified here today. It claims that 501(c)(4) groups have, "made it easy for foreign entities" to violate the legal prohibition against foreign spending in the U.S. election. Of course, that line of argument suggests that the IRS is tasked with enforcing campaign finance laws which is untrue. That is the job of the Federal Election Commission.

The Campaign Legal Center's comment insists that the threat of foreign spending in U.S. elections looms large, but it provides limited evidence for this claim, relying most heavily on a newspaper story in which journalists pretended to be a foreign national trying to donate to a U.S. presidential campaign. The Campaign Legal Center's comment also cites a report from the Center for American Progress that warrants foreign spending in our elections "could" become a problem and is a "latent threat."

Yet that report gives not one instance of even alleged foreign spending. And just as important, that report is addressed properly to the Federal Election Commission. It never mentions the IRS which is further evidence that opponents of your proposed rule should be pleading their case in a different forum before a different agency.

In the most disingenuous part of its comment, the Campaign Legal Center cites a report that the FBI investigated whether a Russian banker "had funneled money to the 501(c)(4) arm of the National Rifle Association which spent $30 million on the 2016 presidential election." And, of course, you just heard that repeated here. The Center fails to admit that the investigation never led the Justice Department to charge anyone with such an illegal scheme.

The Center misleads the public further when it recites how the banker's assistant pled guilty to acting as a foreign agent without proper registration. The guilty plea is true but the Center fails to admit that no monetary contributions of any kind were involved in the cases resolution. This section of the Center's comment is innuendo, not evidence. And the kind of misleading talk that gives politicians a bad name.

On the other side, today you have multiple supporters of the proposed rule observe that it would correct the IRS's current malpractice of forced disclosure of donors to numerous types of tax-exempt organizations. That coerce disclosure has no justification in the constitution. And even the skilled lawyers at the Campaign Legal Center do not claim such justification. Instead, they argue only that the current regime of forced disclosure "is not unconstitutional." Let me add that forcing disclosure from all 501(c) organizations is not required under any law passed by the people's representatives.

Opponents of the proposed rule can only attempt to justify disclosure of donors on the theory that somehow this coercion will discourage dark money in politics. But this claim is spurious given that the Schedule B disclosure form is supposed to remain confidential under current law and therefore, not be exposed to the public.

Here we encounter the bad faith of the proposed rules opponents. They know that IRS officials have, at times, unlawfully exposed donors to non-profits whose donors they intended to

intimidate. Just as government officials in Jim Crow era Alabama hoped to intimidate the NAACP's donors and members.

Similarly, we may be confident that some state government officials hope to use forced donor disclosure on the federal Schedule B to expose donors to intimidation. The threat of intimidation against free speech is so great in our day that we have invented a new term, cancel culture, to recognize the threat.

It was especially disingenuous for the state of California to pretend in a lawsuit over its efforts to coerce disclosure, that there is no such threat. You'll recall that the founder and CEO of a giant tech firm had to resign because of a small donation to a California ballot initiative that he had had exposed.

Another danger arises from freedom of information laws in various states which may end up compelling state officials in possession of a Schedule B to provide this legally confidential information to the public. Then there are the problems raised by cybersecurity. The state of California, for instance, accidently posted over 1000 Schedule B's on a website.

A federal district judge, before he was overruled by the 9th Circuit itself, the most overruled circuit in the country, declared, "given those extensive disclosure of Schedule B's, even after explicit promises to keep them confidential, the attorney general's current approach to confidentiality obviously and profoundly risks disclosure". And even if government officials at every level lack any intent to misuse coerce disclosure, they still expose donors to great dangers from the possibility of cyber attacks on government data. Which, by the way, are most commonly launched by the hostile governments that opponents of this claim to fear as threats to our elections.

In addition to the state of California's error already mentioned, the historical record includes the 2015 attack on the Office of Personnel Management which shows that millions of citizens have had their confidential information exposed in precisely this way. All of these dangers of intimidation of citizen donors provide a powerful case in support of this proposed rule. The dangers also explain why an overwhelming majority of public comments you received on the proposed rule, roughly two to one, were in support of the rule. And it explains why I testify strongly in its support. Thank you very much for this opportunity.

MS. JUDSON: Thank you. Next Eric Peterson of the Pelican Institute for Public Policy.

MR. PETERSON: Thank you very much for allowing me to testify today. My name is Eric Peterson and I am the director of policy for the Pelican Institute for Public Policy, a 501(c)(3) non-profit, non-partisan research center that serves as a leading voice for free markets in the state of Louisiana. We are supported by donors both across the state of Louisiana and the nation and we take the privacy of our donors very seriously.

Related to the Pelican Institute is Pelican Action, a 501(c)(4) non-profit organization that communicates with the public about issues of importance in Louisiana. I am here on behalf of the Pelican Institute and all our supporters today to speak in favor of no longer requiring certain

tax exempt organizations to disclose the personal information on their Schedule B forms to the IRS.

The Pelican Institute strongly encourages the IRS to move forward with this proposal to rescind Schedule B information reporting requirements. We believe the sensitive information does not need to be collected by the IRS for the following reasons. All Americans have the right to support causes they believe in without fear or harassment or retaliation. The bulk collection of data provides no information to the IRS for enforcing tax law. But it does create a high risk of inadvertent disclosure which further burdens the IRS and threatens our supporter's privacy that could result in our donors being harassed.

Finally, the nature of Louisiana's political culture combined with the reporting requirements might discourage citizens to giving to causes they believe in. This could directly impact the Pelican actions ability to speak out on issues of vital public importance in our state. I don't have to tell the people in this room, we live in a fractured time in American life. Many citizens not only disagree with one another but actively loathe one another. It has been estimated that 42 percent of those in major political parties not only disagree with their opposition but view the opposition as "downright evil." This suggests that over 48 million Americans of the opposite political party view those people as morally bankrupt at the very least.

Given this charged political climate, fear of speaking out in support of causes they believe in is not unwarranted by citizens of this country. Take for example the recent example of a Texas congressman tweeting out the names of his constituents who donated to the opposite political party. Although this information was and remains publicly available on the FEC's website, few people would ever seek it out and its visibility was certainly increased by that tweet.

But because of one congressman's tweet, he informed thousands of his constituents' friends, neighbors, and co-workers of their political leanings without their consent. The intention of this tweet was clear. Because these individuals donated to a cause the congressman dislikes, he had to publicly shame them in the highest profile venue available. While tweeting of the names was not illegal, Americans across the political spectrum should be wary of a culture which singles out everyday citizens for their political beliefs.

Thankfully, citizens who give to many non-profit organizations aren't subject to the same risks of public shaming as those who give directly to political candidates. But the mere collection of this donor information by the IRS increases this risk substantially. Furthermore, the collection of this information serves no benefit to the IRS tax enforcement duties as many others testified earlier today.

There are many examples of purposeful and accidental release of donor information. Again, unlike the claims that you've heard earlier today. Look no further than the state of California where employees mistakenly posted over 1800 confidential Schedule B's of various organizations. These were publicly available for anyone to find and easily download.

This includes the 2009 Schedule B form for Planned Parenthood which includes the list of names and address of hundreds of donors opening them up to harassment and intimidation. Mercifully,

these disclosures were relatively small and geographically concentrated. By contrast, the IRS collects tens of thousands of groups across the country in light over growing concerns over hacking such as the data breach of the Office of Personnel Management which has been noted earlier today.

It is clear that having the federal government collect all this information is significantly larger today than it would have been 40 years when a kind of inadvertent breach would have to require taking reams of paper outside of the IRS. Given these risks, it's no wonder why everyday citizens of Louisiana might be discouraged from giving to a cause that they believe in. Afterall, the most famous governor in our state's history was assassinated over using his governmental power to reward a supporter and punish and opponent.

Although this kind of behavior is less pronounced in Louisiana today, the Huey Long populous culture remains in our state. In fact, just last year, state Medicaid contracts worth billions of dollars were thrown out by Louisiana's chief procurement officer due to mishandling of bids. The companies raising concerns over these bids accused the governor's office of bias, even falling asleep during the presentation. Many of those who were given the contracts were a noted supporter of the governor.

But, of course, corruption in Louisiana is just not limited to the governor's office. Recently the Lafayette city marshal was sentenced to a year in jail over corruption charges. He did not face charges, however, over using his position as a city marshal to arrest the co-chairman of the recall effort for writing hock checks worth less than $200. I should note to the IRS that he wrote these checks more than 20 years ago before he charged by the crime by the city marshal.

There was also evidence showing that the city marshal had a former police officer and his wife arrested for filing a public records request with his office. Is it any surprise that a news story about this abusive power, those quoted would only do so on the condition of anonymity with a reporter. The culture of fear, harassment and intimidation is alive and well in Louisiana today.

Given this kind of politics we have in Louisiana, why would anyone donate to an organization that those with political power would use that political power to punish them for giving to organizations who disagree with them. Well, this is not the same threat faced by the NAACP and the 1950s Alabama that threat is very real and felt by our citizens today.

And make no mistake, the Pelican Institute has staked out unpopular positions with the political establishment. We support policies like criminal justice reform. We have an ongoing lawsuit with the state bar association which has ruffled more than a few feathers in the state of Louisiana.

And while employees like me at the Pelican Institute are willing to live with these consequences, many of our supporters are rightfully not. They are not willing to risk their financial futures or risk the safety of themselves or their families over supporting causes they believe in.

The IRS has a wonderful opportunity in front of it to reduce the burden on itself and the Louisiana citizens who want to support causes they believe in by putting this regulation forward.

As such, the IRS should adopt these proposed changes to existing regulations and further strengthen citizens right to speech, privacy and association as protected under the first amendment. Thank you very much for your time. I look forward to any questions you may have.

MS. JUDSON: Thank you. Next, Ann Stillman of the Church Alliance.

MS. STILLMAN: Thank you for the opportunity to speak at this hearing. I am the secretary of the Church Alliance, and I'm going to speak on an aspect of the notice of proposed rulemaking that is different than all of the prior speakers. The notice of proposed rulemaking questioned the continued usefulness of revenue procedure 96-10. I am here to tell you that that revenue procedure remains useful to Church Alliance members and we urge its preservation.

The Church Alliance is composed of 36 church benefits organizations serving mainline and protestant — mainline and evangelical protestant denominations, Jewish entities, and Catholic schools and other institutions. We are integral parts of the churches that we serve.

Church Alliance members provide employee benefits, including retirement coverage, to approximately 1 million church workers across the country serving over 155,000 churches, synagogues, and other church related ministries. The important work of our Church Alliance members allows our church workers to keep their focus and resources dedicated to their missions and communities without having to worry about their retirement security.

Likewise, the ministries can stay focused on their missions and not have to spend time designing employee benefits for their church workers. Today, I would like to make three points that are responsive to the notice of proposed rulemaking. And then I would like to provide a little bit of detail about those three points.

First, as I said earlier, revenue procedure 96-10 remains useful to Church Alliance members, other church benefits organizations and other church affiliated entities covered by that revenue procedure. For those of you who don't know what that revenue procedure provides, it excuses church benefits organizations and other similar organizations from the Form 990 filing requirement. So, that's my first point.

The second point is the entities are integral parts of the churches and have never been required to file Forms 990. And third, we urge that the organizations excused by that revenue procedure continue to be excused either by continuation of the revenue procedure or by incorporation of the exemptions in that revenue procedure into regulations.

So, back to my first point. Revenue procedure 96-10 remains useful to Church Alliance organizations. The notice of proposed rulemaking questions the usefulness of this revenue procedure because of a provision in the Pension Protection Act of 2006. That provision prevents the Secretary of the Treasury from relieving a code section 509(a)(3) supporting organization from the Form 990 filing requirement.

Thus, if organizations described in that revenue procedure are supporting organizations, they cannot be excused from the Form 990 filing requirement. However, Church Alliance members

are not supporting organizations to vote section 509(a)(3). Supporting organizations must be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the supported organizations.

In contrast, retirement plan assets that are managed by our organizations must be held and used for the exclusive benefit of plan participants — in our case, approximately one million church workers across the country. Therefore, our organizations can't be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of supported organizations. Instead, Church Alliance members qualify as public charities, under 509(a)(1) or (2). Our organizations also continue to meet the other requirements of revenue procedure 96-10, and, thus, can be excused from filing a Form 990, under that revenue procedure.

So, back to my second point. Church Alliance members and other entities covered by that revenue procedure, as integral parts of their churches, have never been required to file Forms 990. When the tax-exempt organization information return was still — was first introduced in 1943, religious organizations were excused. In 1965, the category excused was narrowed to churches, integrated auxiliaries, and conventions, or associations of churches, and then the IRS and churches debated for a number of years over the term integrated auxiliary. While they were attempting to come to a resolution, the IRS issued notice 84-2, and that notice stated that certain classes of organizations would be relieved from the Form 990 filing requirement, and those types of organizations are the same exact types of organizations that are relieved from the filing requirement, under revenue procedure 96-10.

So, why were those organizations — why are our organizations excused? Notice 84-2 stated that the organizations were excused because the organizations are vehicles that churches, integrated auxiliaries, and conventions, or associations of churches use to finance their activities, manage their funds, or provide retirement benefits for their church employees. The notice, also, stated that requiring such organizations to file annual information returns would be equivalent to requiring churches, integrated auxiliaries, and conventions of associations of churches to file annual information returns, reinforcing the importance of the First Amendment, Separation of Church and State, and preventing Government entanglement with religion.

In some cases, Church Alliance members have been in existence for hundreds of years. These organizations have long histories that are deeply intertwined with their churches. Back to my third point. We urge that the organizations excused by revenue procedure 96-10 continue to be excused, either by incorporating the exceptions in that revenue procedure into Treasury regulations, or by allowing the revenue procedure to remain in full force and effect.

We are grateful for the work of the IRS and Treasury in this area, and we are happy to meet to discuss this, if that would be of interest, or to answer any questions. Thank you for your time.

MS. JUDSON: Thank you. G. Daniel Miller of Conner & Winters LLP.

MR. MILLER: Thank you very much. I — my name is Danny Miller. I'm a Partner in the Conner & Winters Law Firm. I represent a number of church employee benefit boards and

programs, and I also work for — and, on occasion, with other church financial organizations, including church foundations and church loan extension funds. I support — I'm here to support what Ann Stillman just shared with you, from the perspective of the Church Alliance, regarding revenue procedure 96-10, and urge you to continue to provide the Form 990 administrative filing relief that that revenue procedure provides, and do that, so, in the future.

The notice of proposed rule making that we're all here about today, that referenced the reporting relief that's provided by Rev. Proc. 96-10, for organizations, certain organizations, that are operated, controlled, or sponsored by one or more churches, integrated auxiliaries, or conventions, or associations of churches. The preamble, though, in the proposed regs, indicates that it's unclear whether Rev. Proc. 96-10 continues to have practical application. It indicates that the Treasury Department and the IRS expected few, if any, organizations that meet the requirements of 96-10 still rely on it, and that's — that was said because of the change that Ann mentioned earlier, that was made in the Pension Protection Act of 2006, that prevents the secretary of the Treasury from relieving a supporting organization, described in code section 509(a)(3), from 60-33 reporting requirements, and, in the preamble, you ask, you know, for comments on whether the Rev. Proc. 96-10 was — continued to be of use and usefulness. You asked that same question, by the way, back in Rev. Proc. 2011-15, and there were no comments. So we wanted to be sure that you heard from us this time around.

Just a little brief history, here, too, on this. I think the bottom-line question, by the way, from reading the preamble is are there organizations described in Rev. Proc. 96-10 which are not 509(a)(3) organizations, and the answer is yes, there are. As Ann mentioned earlier, and I'll mention here, in a second, there are. So, as integrated auxiliaries of churches are, of course, exempt from filing a 990, and in the early 1980s, a question came up for one of the benefit boards, and that benefit board's treasurer asked a local IRS key district office whether their church benefit board had to file a Form 990. That was a question that probably, in retrospect, that person wished was never asked because the answer was yes. Eventually, it came back yes, you do have to file the form. You're not an integrated auxiliary.

Prior to that event occurring, church benefit boards believed that they were integrated auxiliaries, and when the discussions ensued, following that initial determination by the key district office, a number — the Church Alliance got involved. There were a number of different denominational benefit boards and programs involved in those discussions, and notice 84-2, really, was the resolution of those discussions. The IRS was not willing, in those discussions, to concede that the benefit boards did qualify as integrated auxiliaries, under the rules enforced at that time, but they did — the IRS did believe that the — all of the organizations should be exempt from filing Form 990, and, as Ann mentioned earlier, notice 84-2 gives the rationale for that, which is to say that these organizations are doing what the churches and integrated auxiliaries would do themselves, could do themselves, and, so, therefore, not allowing them to be exempt would be effectively denying that exemption to the churches and integrated auxiliaries.

In 1986, the integrated auxiliary rules were revised to remove a requirement that an integrated auxiliary had to be exclusively religious in purpose, and when that happened, and the regs were issued in proposed form, the Church Alliance, again, commented and said that it noticed that, in the proposed regs, the exemption from filing, that was set out in Notice 84-2, was not provided in

the proposed regulations and asked that it be put in there. In the preamble to the 96 regulations, Treasury and IRS said that they did not believe that the organizations described in 96-10 necessarily met the definition of an integrated auxiliary, under the new version of the regs. They were adopted in 1996, but the preamble went on to reiterate the same thing that was said in Notice 84-2. It indicated that the rule in 84-2, which, eventually, was incorporated in Revenue Procedure 86-23, would be continued, through the issuance of a new revenue procedure that was going to be issued at the same time the final integrated auxiliary regs were issued, and that was revenue — Rev. Proc. 96-10.

So, the — as I mentioned earlier, the preamble indicates that you believe that the organizations described in 96-10 are likely supporting organizations described in 509(a)(3), and I can understand why you would think that because the language that is used to describe the organization in 96-10 is really that of — for a type one 509(a)(3) supporting organization. Of course, at the time that language was used, there was no Pension Protection Act of 2006, but that's — that is what that language says. However, there are organizations that are described in 96-10 who are 509(a)(1) organizations, also classified as 509(a)(2), and, in addition, there are organizations that consider themselves to be integrated auxiliaries, but have not gone in to ask that question, again, maybe in light of the answer that was given in the early 80s would be why, but — and, so, for them, as well, 96-10, itself, acknowledges that there are some organizations described in it that may be integrated auxiliaries, but the test, there, is not as clear, and, so, the nice thing about 96-10 is it's understood, it was carefully crafted to cover these church financial organizations, well understood, and it works. It has worked for a fairly long period of time, and, so, we would urge that you continue to make that available, either in the form of the regulations themselves, or through continuing 96-10.

One other thought, just to share. Church benefit boards are one type of financial organization. A couple of others that you probably would sort of think of, too, are church foundations that handle monies as foundations would, and also church loan extension funds that provide financing, low interest loans, and financing for building churches and adding on to churches in particular denominations and faith groups. So, again, I urge you to continue the relief that 96-10 provides. We do think it's needed. We think the organizations that are not 509(a)(3)s that can continue to rely on 96-10 for their relief. Be happy to answer any questions you might have, but thank you, again, for the opportunity to share my thoughts with you here today.

MS. JUDSON: Thank you very much. We — our technical experts may have some follow up questions, related to — but we talked to procedure administration, and they felt, because it could involve disclosure issues, it would be better if we followed up, based on the comments, but we very much appreciate the comments and the additional detail you've given us today. Next is Mark Brnovich, Office of Arizona Attorney General.

MR. BRNOVICH: Thank you. Let me begin by saying that I know it's been a long day for everyone, including all of you, and I couldn't help but think of something Congressman — Former Arizona Congress (inaudible) once said, that everything has been said, but not everyone has said it. So, I will highlight some of the same points that many of you have heard earlier. I also will say that I am the attorney general of the state of Arizona, but prior to that I was both a state game prosecutor and an assistant United States attorney. So, I have a lot of experience

dealing with the IRS on a professional level, not personal level, and I will tell you that, on a consistent basis, the agents of the IRS have always been very complete and very thorough on all their investigations, and I know how seriously all of you take all your jobs. So, thank you very much for your service, but, as I was thinking about coming here, today, one of the things — and about my experiences with Federal IRS, federal agents is that it reminded me of an old joke, and that joke is that why did the auditor cross the road? Because he looked in the file, and that's exactly what they did last year, and one of the things that very often in government, and especially when we start dealing with financial matters, we have — seem to have this ability that, if we have done something one way, we will continue to do it that way in the future, and we always should take a step back and recognize whether rules, regulations, and statutes are serving the people because that's first and foremost who all of us, as a public servant myself, need to always keep in mind — that we serve the people. So, I'm here to testify, today, because I believe that the secretary of the Treasury is justified in using his legal discretion to remove the regulatory requirement that tax-exempt organizations submit their donor list on annual returns. Such information is not necessary for the agency to carry out its mission, and the — continuing to collect this data gives rise to increased costs and vulnerability.

As you know, the current — the Treasury Department is currently amending a portion of its regulations to eliminate the requirement of the names and addresses of private citizens who contribute to certain tax-exempt organizations be annually disclosed. Further, this type of blanket submission of personal information of every tax-exempt organization's donor list is not necessary for the Treasury Department's enforcement operation, nor is it needed by the states. Furthermore, I would submit to you this rule that maintains the requirement that exempt organization keep this information, so that it may be inspected, is not necessary because experience has shown that government can access this information through other means during investigations.

Frankly, the reality is that state governments do not need to rely on the IRS's current data collection for their enforcement efforts. Right now, 47 states and the District of Columbia regulate non-profit organizations without requiring the disclosure of names of donors, and it has not compromised any of these jurisdictions' ability to detect unscrupulous activity by non-profits. The experience of every state in the union, except those that have the reporting requirements, California, Hawaii, and we heard from officials from New York today, I would argue, demonstrates that effective enforcement can be carried out without the broad preemptive disclosure of donor lists. The 47 states with — have identical government interest as those other three, and we have been able to enforce the law without having these lists and let me give you one quick example.

Recently, all 50 states joined in a Civil Enforcement Action in Arizona against four scam charities. Collectively, the scam — sham non-profits had raised more than $187 million from donors throughout this country. However, through the use of targeted subpoenas, we were able to obtain information and successfully litigate and prosecute that case. So, blanket reporting requirements were, clearly, not necessary for that enforcement, and with multi-state action, and I would argue that they only increase compliance costs for exempt organizations, consume IRS resources, and possibly make important information vulnerable. Tax-exempt organizations and their donor lists, now, face increasing threats that their information will be compromised after submission to the government, either through inadvertent or data breeches by hackers. This

contributes to the chilling effect that such regulations have because such sensitive information and heavy — and personal information can have social consequences beyond that specific non-profit organization.

We, as a country, and our First Amendment embodies the importance of free speech and the importance of freedom of association. We recognize — the Supreme Court has recognized — that it requires vigilant protection, and the tradition of anonymity in one's exercise of their First Amendment rights goes back to the very founding of this country. Heck, even the Federalist Society papers were drafted and published anonymously. Even great works by authors, like Thomas Paine, during the Revolutionary period, were published anonymously because of the fear of retaliation, and that is why the U.S. Supreme Court has long recognized that privacy and group associations indispensable to the preservation of freedom association and, in a certain situation, disclosure of members has resulted in the hostility in members, and we have heard various stories, today, about how that's happening in the real world. So, even when the Government has the highest of intentions to preserve the security of records, cybercriminals have breached and stolen data of millions of people. In 2015, the Office of Personnel Management announced two major security breaches, where more than 4.2 million records were disclosed, and I know of this personally. I have a current security clearance. I had one in the past, and I was one of the people whose information was compromised by, or hacked by a foreign government, allegedly, several years ago. So, we know that no matter what we do to try to take care of our most sensitive information, it is always subject to bad actors out there, trying to get a hold of it. So, we know that that's unacceptable, and that's why it's time that we all recognize that blanket compulsory disclosure chills the association rights of non-profit organization donors and increases costs to the IRS, and it's all to maintain information that is not necessary for state law enforcement. Moreover, we should recognize than this world we live in, with dangerous data breaches, that often the best defense is for information not to be collected in the first place. Thank you very much, and we submitted a letter with all of our comments, as well. So, I appreciate your time today. Thank you.

MS. JUDSON: Thank you, Attorney General Brnovich. Next, we have Ashley Varner, from the Freedom Foundation.

MS. VARNER: Hello there, and thank you so much for taking so much of your day to listen to all of us. We really do appreciate the opportunity to be heard. Transparency is intended for the governments, while privacy is reserved to the citizens. This concept is the cornerstone of American political discourse and I do have to laugh. This was just said, but transparency for citizens who want to exercise their rights has been a paramount concern from the very foundation of this country when our founding fathers wrote under pseudonyms for the Federalist Papers. I'm glad to be on the same page.

We've also heard about the NAACP cases today. In fact, we haven't heard quotes from them and I want to particularly talk about what they wrote that said it was a violation of citizens' private rights to expose their private affiliations and they wrote that exposure could lead to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, the court wrote we think it apparent that compelled disclosure of the NAACP Alabama Membership is likely to affect adversely the ability of the

NAACP and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate in that it may induce members to withdraw from the association and dissuade others from joining because of fear of the exposure of their beliefs and the consequences of this exposure.

These rights must be protected, which is why the Freedom Foundation strongly supports the IRS rule change proposal to relieve the qualifying organizations from the obligation to disclose names and addresses of their contributors to the IRS on annual 990 tax forms. We feel so strongly about this because, unfortunately, the Freedom Foundation is already the subject of the very backlash outlined in *NAACP v. Alabama*.

Funded by labor unions upset that the Freedom Foundation's work helps public employees leave their unions and stop paying dues, the Northwest Accountability Project was formed to come through out 990 tax filings to get information on our organizational leadership, our board of directors, our employees, and our donors. And we have all been the target of them and with harassment ever since.

Our members of the board have had letters mailed to their entire neighborhoods falsely accusing them of opposing the environment, women, the LGBTQ community, even though we don't deal with any of these issues. We have nothing to do with those issues, but they have been targets. They have received — their neighbors have received this mail and it's all based on lies and defamation.

Similar letters have been sent to the neighbors of Freedom Foundation CEO and our executive vice president as well as a member of our staff. Some of these letters have included the exact streets and house number of the targets from the unions.

The — well, and here's another example. I've got a whole packet here. So, the so-called Northwest Accountability Project has arranged to picket outside the businesses owned by our board members. They have created websites and petitions denouncing firms owned by members of the board in an effort to drive away business and ruin their professional reputation and their income.

In one instance, a homebuilder board member was targeted with letters to potential homebuyers and previous home purchasers of his alleging that their home may be subject to environmental negligence, health violations, and other serious accusations about his business practices. The letters targeting this board member included a survey asking those who had purchased homes from him if they experienced any health issues since moving into their homes, if they had any safety or environmental concerns about their property, and whether they were ever uncomfortable during the buying process or felt they experienced civil rights violations when dealing with this board member's business. The survey was clearly designed to insert doubt and remorse on the part of the homebuyer and damage the board member's professional reputation and perspective business contacts.

In another instance, a now former board member who owns a winery and restaurant was targeted with letters and emails sent to area event planners claiming that he was anti-LGBTQ. He has

learned of at least one LGBTQ couple who were considering his venue to host their wedding, but they dropped his venue from consideration when they learned about the allegations made by the Northwest Accountability Project.

After identifying the Murdock Charitable Trust as a donor of the Freedom Foundation, the unions mounted a years long intimidation PR campaign against the Murdock Trust, including targeting one Jeffery Grubb, a Murdock trustee, who also happened to be a vice president for Wells Fargo. Mind you, Mr. Grubb did not sit on the Freedom Foundation's Board of Directors. He was merely the connection between the Murdock Charitable Trust and Wells Fargo. But that was all the unions needed to elevate their pressure campaign.

Lee Saunders, president of the American Federation of State, County and Municipal Employees, one the largest labor unions in the country, sent Wells Fargo CEO John Stumpf a letter expressing his "displeasure" at Mr. Grubb's support of the Freedom Foundation through his role at the Murdock Trust and informed Mr. Stumpf that Mr. Grubb exposed "Wells Fargo to unnecessary reputational and financial risk," urging the CEO to do all in [his] power to distance Wells Fargo from these kinds of organizations. Lee Saunders' message was clear. We can make things difficult and expensive for you if you continue to have even distant ties to groups we don't like.

The union backed the Northwest Accountability Project, has even set up a website doxing all of us who work for the Freedom Foundation, including myself. They have a website listing our pictures, our home addresses, our birthdates, and other biographical information. Our offices have had to take extra security measures after being stormed by angry groups. Employees have been surrounded in our parking lots and they have been followed to their cars after work and pictures then taken of their license plates. These tactics are used to intimidate and bully people out of exercising their free speech rights and their desire to participate in cause-based activities.

Knowing this, the federal government should take action to minimize the ability of such harm by protecting the private information of Americans who simply want to participate in political discourse in their own way as private citizens. Although the Freedom Foundation as a 501(c)(3) organization would not even directly benefit from this rule change, we are very pleased that the IRS has proposed relieving other nonprofit organizations from the obligation to report the names and addresses of their contributors and urge the IRS to retain this proposal in its final rule. And I have kindly made packets for each of you. But thank you, again, for your time.

MS. JUDSON: Thank you. Next, Robert Alt from the Buckeye Institute.

MR. ALT: Good afternoon. My name is Robert Alt and I am the president and CEO of the Buckeye Institute. Through our legal center, the Buckeye Institute works through courts, executive agencies, and legislatures to protect the First Amendment rights of Americans.

I recognize that I am the last speedbump between you and lunch. So, I will try and be efficient. But let me start by saying I am absolutely thrilled to be here today and it's not just because I started my journey here at about 1 p.m. yesterday and had no fewer than three flights canceled to get here and arrived from the airport in the middle of the hearing. No, I'm thrilled to be here

today because the proposed rule is the right thing for this agency to do to help restore public trust and I commend the IRS for taking this regulatory action to protect the First Amendment rights of Americans.

This agency was correct in stating that "the IRS does not need the names and addresses of substantial contributors to functionally 501(c)(4) and 501(c)(6) entities in order to carry out the Internal Revenue laws." Because this agency does not need the information to carry out its functions, it should not engage in electronically warehousing this information which both increases the risk of disclosure and has the effect of chilling speech and association.

Turning first to the substantial risk of disclosure from collecting and storing this private taxpayer information, this agency, while not perfect, has done a far better job than the states that support forced disclosure of private taxpayer associational information in protecting that private information of taxpayers from disclosure to third parties. There is no — this is no doubt due in part to federal law making such disclosure a serious crime, a felony befitting the injury inflicted on taxpayers by such acts.

Even so, there have been notable examples of improper release of Schedule B information by this agency which have been discussed by prior witnesses today and were highlighted in my written comments to the agency, and other federal agencies like the Office of Personnel Management have suffered significant data breaches. In the absence of a clear need for this information to carry out the Internal Revenue laws 501(c)(4) entities, these IRS disclosures and data breaches provide particularly compelling reasons to stop collecting and storing the unneeded the private taxpayer data.

But the downstream of facts and collection are far worse. California has what can only be described as an extraordinarily shameful record of failing to safeguard taxpayers' Schedule B information about protected association. As Judge Akuda detailed, California posted over 1,400 Schedule Bs online and 350,000 Schedule Bs were easily accessible online due to severe vulnerabilities in how they warehouse their records. Even after safeguards were allegedly put in place in anticipation of trial, an expert was able to obtain an additional 40 Schedule Bs that were supposed to be secure.

But let's be clear: Even if governmental entities could assure with perfect certainty that the information would not be released to third parties, this would not cure the First Amendment harm. And so promises of future improvement or even perfection in data management are inadequate. The Buckeye Institute's own experience demonstrates that there is a chilling effect that comes from the actual act of reporting donors to the government.

Let me explain. In 2013, shortly after the Ohio General Assembly relied upon the Buckeye Institute's policy recommendations in rejecting — at least for a time — Medicaid expansion in Ohio, Buckeye learned that it would be audited by the Cincinnati Offices of the IRS. The audit notification came on the heels of the widespread reporting and congressional investigations of wrongdoing by the Cincinnati Field Office of the IRS, which an IRS Inspector General's audit found singled out for special scrutiny, that among other things exercised their First Amendment rights by criticizing the government.

Against that notorious backdrop, Buckeye's donors feared that this audit was somehow politically motivated retaliation against Buckeye's opposition for what had been a White House priority. These donors expressed concern that if their names appeared on Buckeye's Schedule B or other Buckeye records subject to disclosure in the audit, they too would be subjected to retaliation including potential retaliatory audits. Numerous individuals therefore opted to make smaller anonymous cash donations forgoing a donation receipt entirely in order to avoid any potential retribution or retaliation based upon their contributions.

To be clear, the concern here on the part of the donors was not potential disclosure of their information to third parties but rather how governmental entities would use or rather misuse the information themselves. This concern about disclosure to a government agency, which could be used in facilitating government retaliation for protected activity, had a demonstrable chilling effect on the freedom to associates. The chilling effect arises in substantial measure from the legitimate concerns many Americans have about the politicization of governmental action following the revelation of actions by the Cincinnati IRS Office that targeted groups based upon their protected speech. There was a fundamental breach of trust. This proposed rule does a great deal to restore public trust after the previous malfeasance regarding the First Amendment rights not only of nonprofit entities but of their supporters.

I'd like to take a couple of minutes and respond a bit to some of the claims that were made both in written comments made today by New York and supporting state or states which oppose this particular rule. Much of what the State of New York argued here amassed to a claim that government warehousing of private taxpayer information, which is not necessary to executing Internal Revenue laws, is nonetheless useful to potential future enforcement actions. Undoubtedly, that is true. The Constitution is frequently an impediment to prosecutorial and regulatory efficiency.

But protections against chilling speech and providing due process must be honored even so. This is particularly true where it is plain that the information is not necessary to enforce the law. The lack of necessity is indicated by practice. Forty-seven states and the District of Columbia are able to successfully regulate charitable entities, thank you very much, without warehousing private information about how Americans have chosen to exercise their associational rights.

And indeed, despite the grand protests being made about the longstanding practice of collection of such data, New York, California, and New Jersey were perfectly capable of regulating charitable entities in their states without storing — too often insecurely — this information about the private giving habits of Americans until a few short years ago.

Administrative convenience is not sufficient justification to chill First Amendment rights or risk the disclosure of private taxpayer data. The proposed rule should therefore be adopted. Thank you very much.

MS. JUDSON: Thank you. We have one additional speaker who signed up and that is Emily Peterson-Cassin, a public citizen.

MS. PETERSON-CASSIN: I should have brought a box, but thank you for the opportunity to testify today. Thank you for holding this hearing. Particularly thank you for taking me late. It's very kind of you.

I'm Emily Peterson-Cassin. I'm the digital rights advocate and the Bright Lines project coordinator at Public Citizen, a consumer advocacy organization championing the public interest in the halls of power.

On behalf of Public Citizen's 500,000 members and supporters across the country, I am here to express firm opposition to the elimination of the longstanding requirement that most nonprofit organizations report the names and addresses of substantial contributors on Schedule B of their 990 filing.

I'd like to direct your attention to our written comments for more detail on what I'm going to say today and I also want to direct your attention to the comments that you received from the National Council of Nonprofit, which will give you a view of opposition to this rule from everyday nonprofits (inaudible) events throughout the country that I think you haven't quite heard from in the testimony today. I wanted to take the opportunity to highlight that.

The consequences of ending the Schedule B requirements would be detrimental to both the enforcement of the tax code regulating exempt organizations and the integrity of the election code, particularly the prohibition on foreign intervention in U.S. election. There are three troubling consequences I wish to particularly highlight. One, this change would undercut the ability of the IRS to monitor and efficiently detect violations of the tax code as they apply to these nonprofits. Two, it would exacerbate the problem of secret election spending. Three, it would facilitate the intervention of foreign governments and foreign interests in U.S. elections at the federal, state, and local levels.

First, the proposed rule threatens proper oversight of the tax code. The reason for this reporting requirement on Schedule B is to ensure proper oversight by the agency against of self-stealing, improper loans, or other illegal business practices by exempt organizations. Schedule B information permits detection of schemes like the overstatement of noncash donations that an exempt organization may claim in order to justify excessive salaries for its executives. It permits detection of whether substantial donors have merely set up a nonprofit organization to benefit private business interests or for other personal enrichment.

Without this information readily available, the IRS would have to request or subpoena the information from the nonprofit organization, which could allow the organization to hide assets or destroy documents or other evidence. It would also be time-consuming and costly both to the IRS and to the nonprofit organization.

Second, the proposed rule would make secret money even less transparent. Collecting the names and addresses of substantial donors to nonprofit organizations can provide the IRS with important clues as to whether an organization is a legitimate nonprofit or merely a front group for election hearing purposes. If a handful of substantial donors, for example, provide the bulk of an organization's fund whose spending activity focuses on election hearings and the donors are

party operatives or have close relations with candidates or campaign staff, this information should raise a red flag. Without the names and addresses of donors, no such warnings would be provided of a nonprofit organization's primary purpose.

Without donor identities reported to the IRS, the agency would have no clue how and on whose behalf such nonprofit organizations are operating.

Third, this proposed rule facilities foreign meddling in U.S. elections. Make no mistake about it. Foreign interest, including foreign governments, continue to target U.S. elections at all levels. A Senate Intelligence Committee report found that the Russian government not only sought to influence the 2016 Presidential election, but likely targeted election systems in all 50 states. In fact, this time around Russians are not alone. Iran, China, and other foreign governments appear to be joining in the race to influence the 2020 election and they will do it in every way that they can think of, including ways that are detectable to the IRS on a Schedule B.

Foreign intervention is a very real threat to the integrity of U.S. elections. This proposed rule change will vastly facilitate foreign meddling in U.S. elections at the federal, state, and local levels. It is every bit as much the responsibility of the IRS to help protect our democracy as it is for any other agencies of the federal government. In the IRS's case, it must prevent the tax code from being abused by foreign powers to the disadvantage of U.S. interests.

The consequences of this rule change: weakening IRS oversight over Section 501(c) of the Tax Code, driving secret money even further into the shadows, and facilitating foreign meddling in U.S. elections make this proposal not only unwarranted but also damaging to the American system of governing. Thank you very much.

MS. JUDSON: Thank you. Thank you all for your thoughtful oral comments and, for the record, I also want to thank all those who submitted written comments which we are reviewing and analyzing, very much appreciate, and will consider as we finalize the regulations.

This concludes the hearing on proposed regulations, guidance under section 6033 Regarding the Reporting Requirements of Exempt Organizations, REG-102508-16. Thanks so much for coming.

(Whereupon, at 12:23 p.m., the HEARING was adjourned.)