**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

YOUNG AMERICA'S FOUNDATION,

*Plaintiff*,

v.

INTERNAL REVENUE SERVICE, UNITED STATES DEPARTMENT OF THE TREASURY, SCOTT BESSENT, in his official capacity as Secretary of the Treasury, and FRANK J. BISIGNANO, in his official capacity as Chief Executive Officer, Internal Revenue Service,

*Defendants*.

Case No. 1:26-cv-02449-TNM

**MEMORANDUM OF POINTS AND AUTHORITIES**
**IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS**

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## INTRODUCTION

Under the Internal Revenue Code ("the Code"), § 501(c)(3) organizations are exempt from federal income tax. And their contributors may deduct contributions from their own taxable incomes. Such organizations thus benefit from a double-subsidy to the tune of tens of billions of dollars annually. For every dollar donated to amplify a tax-exempt nonprofit's charitable works, a donor may receive a matched subsidy at the applicable tax rate, which encourages further donations. But this virtuous cycle would break down if the program were misused for purposes other than the public good. And with so much money flowing through, the risk of abuse is self-evident. In fact, it already happened. Widespread abuse of § 501(c)(3) status prompted Congress over 50 years ago to enact legislative reforms that continue to promote compliance with the laws governing these organizations.

Plaintiff, Young America's Foundation (YAF), challenges one of those reforms. Because the IRS cannot audit everyone, much of the Code seeks to promote voluntary compliance through, *inter alia*, information reporting requirements. The provision at issue is no different. To ensure that § 501(c)(3) subsidizes only the charitable purposes authorized by statute—and does not impermissibly benefit private interests, such as donors—§ 6033(b)(5) requires § 501(c)(3) organizations to provide the names and addresses of "substantial contributors"—those who donate at least $5,000 or 2% of an organization's total annual contributions, whichever is higher. So, for an organization that receives $2 million in annual donations, the requirement applies only to contributors who donate at least $40,000. Of course, an organization is free to elect a tax status that does not mandate reporting of the information. For example, an organization that does not want to comply can still get an income tax exemption under § 501(c)(4). But it will not get the *double* subsidy that comes with the *additional* benefit of deductible contributions.

YAF wants to enjoy the § 501(c)(3) double subsidy but asks this Court to strike down the requirement that it report the identities of its substantial contributors to the IRS. YAF claims that the requirement violates its First Amendment rights. But YAF has failed to state a claim on which relief can be granted.

Federal disclosure laws come in various forms and are correspondingly subject to different First Amendment standards. For example, an outright compelled disclosure—which forces a person to reveal information to the government to escape punishment or exercise constitutional rights—is subject to exacting scrutiny. The Supreme Court applied that standard in holding that a California requirement that nonprofit organizations disclose substantial-contributor information just to exist and solicit charitable contributions violated the First Amendment. *Americans for Prosperity Found. v. Bonta,* 594 U.S. 595 (2021) ("*AFP*"). By contrast, when the government conditions the receipt of a discretionary benefit on a recipient engaging (or not) in certain speech, courts ask whether the government is seeking to leverage the discretionary benefit to control the exercise of First Amendment freedoms beyond the scope of the federal program. The Supreme Court applied that standard in upholding a tax law that barred § 501(c)(3) organizations from engaging in lobbying. *Regan v. Taxation With Representation of Washington*, 461 U.S. 540 (1983) ("*TWR*").

This case falls into a third category: administrative reporting requirements that are part-and-parcel of the (opt-in) federal program itself. This sort of requirement has long been subject to rational basis review (or the equivalent). Indeed, the Supreme Court upheld a materially similar condition for second-class mail subsidies. *Lewis Pub. Co. v. Morgan*, 229 U.S. 288, 296 (1913). After all, it would make little sense to subject administrative conditions on the receipt of

voluntary financial benefits to the same degree of scrutiny as, for example, a requirement that a nonprofit must disclose its donors just to exercise its First Amendment rights.

Under the applicable standard, § 6033(b)(5) easily passes muster given the government's clear interest in promoting voluntary compliance with the tax system through requiring certain limited information reporting (and its interest in being able to audit the same information when needed). Indeed, this reporting requirement would be valid as a matter of law even under exacting scrutiny.

YAF opted in to this regime in order to receive preferential tax treatment for itself and its donors. But its lawsuit threatens to upset the oversight Congress built into the regime and turn back the clock to a time when abuse ran rampant through, and threatened the viability of, the same regime. This case should be dismissed.

## BACKGROUND

### 1. Tax Benefits and Rules Applicable to § 501(c)(3) Organizations

Ordinarily, a corporation that earns income is subject to tax on that income, 26 U.S.C. § 11, and persons who donate money to support a corporation are not entitled to deductions for those donations. But Congress has provided a special opt-in tax regime – the § 501 tax exemption – for corporations and certain other entities that meet specific criteria and agree to comply with applicable requirements.

A wide variety of organizations that may qualify for tax exemption are listed in § 501(c). Relevant here is § 501(c)(3), which applies to corporations and certain other entities "organized and operated exclusively for religious, charitable, scientific, . . . educational," or other enumerated purposes. To qualify for tax-exempt status under § 501(c)(3), in addition to having a specified exempt purpose under the statute, the organization must not distribute net earnings to

its shareholders or other individuals and must forgo its rights to participate in political campaigns or engage in substantial lobbying activities, with limited exceptions. 26 U.S.C. § 501(c)(3).

Section 501(c)(3) status provides tax benefits to both the organization and its contributors. The organization is exempt from income tax, and its contributors generally are eligible to deduct their charitable contributions to the organization on their individual tax returns. 26 U.S.C. § 170(a). Organizations that opt for § 501(c)(3) status must comply with certain reporting requirements: Annually, the organization must report, among other information, its gross income, expenses, and disbursements; its balance sheet; the identities of its highly paid employees and their salaries; and the total contributions it received and the identities of its substantial contributors. 26 U.S.C. § 6033(b). The substantial-contributor reporting requirement (§ 6033(b)(5)) is at issue in this case.

Significantly, § 501(c)(3) tax-exempt status is "opt-in." 26 U.S.C. § 508(a). There is no requirement that an organization qualify for tax exemption under § 501(c)(3) to exist as a legal entity, to engage in charitable activities, or to solicit contributions. If such an organization chose not to seek tax-exemption under § 501(c)(3), it would be subject to the same tax rules as any other corporation, and it would not be subject to the restrictions on lobbying and political activities applicable to § 501(c)(3) organizations or to the substantial-contributor reporting requirement. Alternatively, a charitable organization could claim tax exemption under § 501(c)(4) without disclosing its substantial donors (but donors would not be able to deduct their contributions). However, if an organization wishes to obtain the double subsidy of tax exemption for itself and tax deductions for its contributors, the organization must elect to be treated as a § 501(c)(3) organization and must affirmatively apply to the IRS for recognition of that status. 26 U.S.C. § 508(a). Having made that choice, and having qualified for those

benefits, the organization must then also submit to the restrictions and requirements of § 501(c)(3) status, including the substantial-contributor reporting requirement.

**2. The § 6033(b)(5) Substantial-Contributor Reporting Requirement**

In 1969, Congress overhauled the Code provisions applicable to § 501(c)(3) organizations to ensure that funds contributed to such organizations were used for charitable purposes as opposed to private inurement or other improper purposes. Tax Reform Act of 1969, Pub. L. No. 91-172, § 201, 83 Stat. 487, 549. The substantial-contributor reporting requirement, codified at 26 U.S.C. § 6033(b)(5), was a component of that legislation. *Id*. at 83 Stat. 520. The legislation was designed to address rampant abuse of the § 501(c)(3) tax exemption. H.R. Rep. No. 91-413 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1645–1646; *see Quarrie Charitable Fund v. Comm'r*, 603 F.2d 1274, 1277 (7th Cir. 1979) ("[The 1969] reforms were prompted by Congressional concern over widespread abuses of the tax-exempt status of private foundations."). The new information reporting requirements were geared toward "provid[ing] the Internal Revenue Service with information needed to enforce the tax laws," as Congress had concluded that "more information is needed, on a more current basis, from more organizations . . . ." H.R. Rep. No. 91-413, at 36 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1681.

Section 6033(b)(5) requires that a § 501(c)(3) organization report "the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors." 26 U.S.C. § 6033(b)(5).[1] The statute explains that Congress requires § 501(c)(3) organizations to report this information "for purposes of carrying out the internal

[1] These requirements do not apply to certain types of § 501(c)(3) organizations not at issue here, such as churches or public charities with gross receipts normally not more than $50,000. 26 U.S.C. § 6033(a)(3); 26 C.F.R. § 1.6033-2(g)(1).

revenue laws," including the prohibition on private inurement and other limitations on the use of a § 501(c)(3)'s publicly subsidized funds. 26 U.S.C. §§ 6033(a)(1), (b)(16).

The IRS has implemented the statute by requiring annual reporting of the names and addresses of substantial contributors on Schedule B to IRS Form 990. 26 C.F.R. § 1.6033-2(a).[2] For organizations with broad public support, such as YAF, to be reported as a substantial contributor, a person's contribution must both (1) equal or exceed $5,000 and (2) represent 2% or more of the organization's total donations for the year. 26 C.F.R. § 1.6033-2(a)(2)(iii)(A); s*ee* Compl. ¶¶ 11, 17-18.[3] Federal law prohibits the IRS from disclosing contributor identity information, with limited exceptions. 26 U.S.C. §§ 6103(a), 6104(b). Improper disclosure can give rise to criminal penalties against an individual and a civil cause of action against the government. 26 U.S.C. §§ 7213, 7431.

This reporting requirement serves multiple purposes under the Code. The Supreme Court has recognized that the federal tax system runs on voluntary compliance, which information reporting indisputably promotes. *See, e.g.*, *United States v. Bisceglia*, 420 U.S. 141, 145 (1975) ("[O]ur tax structure is based on a system of self-reporting. There is legal compulsion, to be

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[2] The definition of substantial contributor varies depending on whether the reporting entity is a private foundation or public charity (and on the characteristics of the public charity). For public charities generally, substantial contributors are those who contribute $5,000 or more. For certain public charities (including YAF) that satisfy the public-support test of the regulations under § 170(b)(1)(A)(vi), substantial contributors are those who contribute more than 2% of total contributions during the year (minimum of $5,000). 26 U.S.C. §§ 6033(b)(5), 507(d)(2)(A); 26 C.F.R. §§ 1.6033-2(a)(2)(ii)(F), 2(a)(2)(iii)(A).

[3] YAF's publicly disclosed Form 990, for 2024, states that it received $38,265,909 in annual contributions, https://perma.cc/3BS8-3ACB, meaning in that year, YAF was required to disclose only the identities of those who contributed $765,318 or more. *See* Compl. ¶¶ 11, 17-18.

sure, but basically the Government depends upon the good faith and integrity of each potential taxpayer to disclose honestly all information relevant to tax liability.").[4]

By its nature, substantial-contributor reporting encourages compliance in that those who control § 501(c)(3) organizations are aware that the IRS has immediate access to the identities of the organization's substantial contributors, discouraging them from engaging in improper private benefit transactions. Further, the reporting requirement discourages taxpayers from inventing substantial false donations to § 501(c)(3) entities and hoping not to get audited.

More specifically, and beyond the obvious issue of discouraging sham deductions, the information can be relevant to whether a § 501(c)(3) organization is properly categorized as a private foundation or a public charity. 26 U.S.C. § 509. A § 501(c)(3) organization that would otherwise be classified as a private foundation can be classified as a public charity if it receives a significant portion of its support from the general public (instead of just a small group of donors). 26 U.S.C. §§ 170(b)(1)(A)(vi); 509(a)(1). Private foundations are subject to further restrictions and requirements that do not apply to public charities, such as restrictions on self-dealing (including with substantial contributors) and distribution requirements. *See generally* 26

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[4] Beyond the Supreme Court, "[i]t is widely known . . . that tax enforcement is excellent whenever such third-party reporting is in place, and that enforcement is weak – even in the most advanced economies – when such third-party reporting is not in place . . . ." Henrik J. Kleven, *Why Can Modern Governments Tax So Much? An Agency Model of Firms as Fiscal Intermediaries*, 83 Economica 219 (2016); *see also, e.g.*, Kathleen DeLaney Thomas, *User-Friendly Taxpaying*, 92 IND. L.J. 1509, 1533–35 (2017) (explaining how third-party reporting, such as that required on the Schedule B form, is its own form of enforcement); Leandra Lederman, *Reducing Information Gaps to Reduce the Tax Gap: When Is Information Reporting Warranted*?, 78 *Fordham L. Rev.* 1733, 1735 (2010) ("[A]ny information that the taxpayer knows the government has about the taxpayer's activities will foster honesty."); Jay A. Soled, *Homage to Information Returns*, 27 Va. Tax Rev. 371, 371-72 (2007) (information returns "are pivotal in causing taxpayers to be forthright in their reporting practices").

U.S.C. §§ 4940-4948. The identities of the organization's substantial contributors and the amounts that they contribute are relevant to determining whether the organization satisfies the public-support test and, thus, whether the organization qualifies as a public charity instead of a private foundation. By requiring information reporting, Congress has chosen to promote compliance with this regime on the front-end (by encouraging accurate self-categorization of the organization) and to aid rooting out abuse on the back-end (by collecting information that can help inform whether to conduct an audit and can help carry out the audit itself).

In addition, the § 501(c)(3) exemption is available to an organization only if "no part of the net earnings . . . inures to the benefit of any private shareholder or individual," 26 U.S.C. § 501(c)(3), and if the organization serves public rather than private interests, 26 C.F.R. § 1.501(c)(3)-1(d)(1)(ii). Because substantial contributors may have significant influence over organizations, they pose a heightened risk of improper inurement. The identities of substantial contributors can assist the IRS in identifying private inurement and private benefit issues involving those substantial contributors. Thus, the substantial-contributor reporting requirement serves an important role in the administration and enforcement of the § 501(c)(3) regime.

**3. Young America's Foundation**

YAF is a § 501(c)(3) organization. Compl. ¶ 4. YAF thus receives the tax benefits available to § 501(c)(3) entities, including exemption from income tax and the ability to receive tax-deductible contributions, and is subject to rules and restrictions applicable to § 501(c)(3) organizations, including the substantial-contributor reporting requirement.

YAF alleges that it "has helped thousands of students protect their First Amendment rights on campus through education, activism, and legal initiatives across the country." *Id.* YAF "relies on financial and other support from individuals, corporations, and foundations that share its ideological views." *Id.* at ¶ 37. YAF describes its activities as "hot button," and, as a result,

alleges that its members and supporters "guard their First Amendment freedom to associate privately." *Id*. at ¶ 38. YAF alleges that the requirement to report substantial contributors chills its First Amendment rights, and those of its contributors, because a leak of such information could expose those substantial contributors to ideological foes. *Id*. at ¶ 39. In support, YAF points to the recent wrongful disclosure of tax returns and return information (including the return information of YAF) by former IRS contractor Charles Littlejohn. *Id*. at ¶¶ 30-36.

YAF filed this case to challenge the substantial-contributor reporting requirement.

## ANALYSIS

YAF fails to state a claim for which relief may be granted. The substantial-contributor reporting requirement does not undermine YAF's members' rights to associate freely. *Contra* Compl. ¶¶ 41-42. Instead, it is a condition on YAF receiving one of the two key financial benefits associated with § 501(c)(3) status. There is no constitutional right to a double tax subsidy. Rational basis review applies to this sort of reporting condition on opt-in federal financial benefits. This condition easily survives rational basis review. And it would survive exacting scrutiny anyway. Thus, YAF has failed to state a claim for which relief can be granted, and the Court should dismiss the Complaint.

### I. The Substantial-Contributor Reporting Requirement Is Subject to Rational Basis Review

#### *A. Reporting conditions on opt-in financial benefits are subject to rational basis review.*

The Supreme Court has long applied the equivalent of rational basis review to administrative reporting conditions on financial subsidies.

Indeed, more than a century ago the Supreme Court's *Lewis Publishing* decision upheld a regime that is remarkably similar to the one challenged here. Congress had conditioned second-class mail subsidies for newspaper publishers on the requirement that such publishers annually

report the names and addresses of the newspapers' editors, owners, and stockholders. *Lewis Pub. Co.*, 229 U.S. at 296. Two newspaper publishers challenged the legislation under the First Amendment. *Id.* at 297. The Supreme Court rejected their challenges. Congress obviously "has the comprehensive right to classify" the mail. *Id.* at 313. The reporting requirement was not a condition on publishers' use of the mail generally, but only on their ability to "enjoy the privileges and advantages of the second-class mail classification," which conferred significant financial benefits. *Id.* at 314. And the requirement was "incidental to the purpose intended to be secured by the second-class classification"; the presence of "advertisement" was relevant to the classification question, and disclosure of interested persons would help illuminate "whether matter which was published was what it purported to be, or was in substance a paid advertisement." *Id.* at 314-316. Because Congress had "deemed" the requirement "incidental and necessary to the complete fruition of the public policy lying at the foundation of the privileges accorded," and there was no exercise of "arbitrary power," the requirement was valid. *Id.* at 316. In other words, although *Lewis Publishing* pre-dated constitutional tiers of scrutiny analysis by decades, the Supreme Court applied the equivalent of rational basis review and upheld the reporting requirement at issue. A materially similar version of that requirement is still on the books today. 39 U.S.C. § 3685.

Consistent with *Lewis Publishing*, rational basis review applies to conditions on tax subsidies that are incidental to the tax program at issue. The most significant case, *TWR*, involved an organization whose § 501(c)(3) application was denied because the IRS determined that a substantial portion of its activities would consist of attempting to influence legislation (making it statutorily ineligible for § 501(c)(3) status). *TWR*, 461 U.S. at 542. The organization claimed the prohibition against lobbying violated the First Amendment.

The Supreme Court held that the statute was constitutional because it did not prevent TWR from lobbying – it simply conditioned TWR's tax exemption on its compliance with certain requirements, including limitations on its right to lobby. The Court likened the exemption to a subsidy: "Congress has not infringed any First Amendment rights or regulated any First Amendment activity. Congress has simply chosen not to pay for TWR's lobbying." *Id.* at 546. Because Congress's decision not to award a tax exemption for lobbying "is not irrational," the Supreme Court concluded, "[w]e have no doubt but that this statute is within Congress' broad power in this area." *Id.* at 550. The "issue" was "not whether TWR must be permitted to lobby, but whether Congress is required to provide it with public money with which to lobby." *Id.* at 551. The case "would be different if Congress were to discriminate invidiously in its subsidies in such a way as to aim[] at the suppression of dangerous ideas.'" *Id.* at 548 (quoting *Cammarano v. United States*, 358 U.S. 498 (1959) (rejecting a First Amendment challenge to a Treasury regulation that denied business deductions for lobbying expenses because the challengers were "not being denied a tax deduction because they engage in constitutionally protected activities, but [we]re simply being required to pay for those activities entirely out of their own pockets")). But otherwise, "Congress is free to attach reasonable and unambiguous conditions to federal financial assistance that [recipients] are not obligated to accept." *Grove City Coll. v. Bell,* 465 U.S. 555, 575 (1984), *superseded by statute on other grounds* (holding that Congress could condition the receipt of federal educational assistance on rules prohibiting gender discrimination). *Id.* at 575.

The Eleventh Circuit applied these principles—and rejected a claim very similar to YAF's—in *Mobile Republican Assembly v. United States*, 353 F.3d 1357 (11th Cir. 2003). That case involved another preferential tax regime – § 527 of the Code, which allows political

organizations to receive contributions tax-free. 26 U.S.C. § 527. To obtain this preferential tax treatment, the organization must report its expenditures and contributions. *Id.* § 527(i), (j). The plaintiffs argued that this reporting requirement was unconstitutional. The Eleventh Circuit disagreed. The court explained that the case was controlled by *TWR*: "Congress has enacted no barrier to the exercise of the appellees' constitutional rights. Rather, Congress has established certain requirements that must be followed in order to claim the benefit of a public tax subsidy." *Mobile Republican Assembly*, 353 F.3d at 1361.

*B. The substantial-contributor reporting requirement is an administrative condition on an opt-in subsidy and is therefore subject to rational basis review.*

As with the mail subsidy at issue in *Lewis Publishing*, Congress has "especially broad latitude in creating classifications and distinctions in tax statutes." *TWR*, 461 U.S. at 547. And "[b]oth tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system." *Id.* at 544. Accordingly, when Congress conditions a tax subsidy on an administrative reporting requirement, that requirement is subject to rational basis review.

For that reason, the substantial-contributor reporting requirement is subject to rational basis review. YAF voluntarily elected to take advantage of the tax benefits available to § 501(c)(3) organizations. Organizations such as YAF are not compelled to elect § 501(c)(3) status in order to exist, or to exercise their constitutional rights; to avoid the reporting requirement, they can simply choose not to apply for the status. YAF need not even give up its tax exemption to avoid the substantial-contributor reporting requirement. It could retain its § 501(c)(3) status, establish a § 501(c)(4) affiliate, and direct donors concerned about the substantial-contributor reporting requirement to support the affiliate instead, albeit without a charitable contribution deduction under § 170. *See TWR*, 461 U.S. at 544 (discussing how the plaintiff in that case could operate with a dual § 501(c)(3) and § 501(c)(4) structure). Just like

the newspaper publishers in *Lewis Publishing*, YAF becomes subject to the requirement only when it seeks to attain the "privileged class" that benefits from an opt-in subsidy. *Lewis Pub. Co*., 229 U.S. at 304. As in *Mobile Republican Assembly*, any "organization uncomfortable with the disclosure . . . may simply decline to register under [§ 501(c)(3)] and avoid these requirements altogether." *Id*. Rational basis review therefore applies.

*C. Heightened scrutiny applies only to compelled disclosures and conditions that control speech beyond a government program.*

When the Supreme Court has applied heightened scrutiny to a disclosure requirement, it has done so because the requirement is either an outright compelled disclosure (not a condition on a voluntary benefit) or because the requirement is being used as leverage to control protected speech beyond the scope of the federal program. At the same time, the Supreme Court has continued to recognize the validity of its decisions upholding, on rational basis review, conditions placed on recipients of public subsidies. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.,* 570 U.S. 205, 215-16 (2013) (comparing the permissible condition in *TWR* with the impermissible condition in *FCC v. League of Women Voters of California,* 468 U.S. 364 (1984)); *see generally AFP,* 594 U.S. at 618 (distinguishing the disclosure requirement for purposes of federal tax administration from the disclosure requirement imposed by the State of California and citing *TWR*).

Start with *AFP*. *See* Compl. ¶¶ 1, 42-49. In that case, the Supreme Court held that California's requirement that charitable organizations disclose their major donors violates the First Amendment. *AFP*, 594 U.S. at 618-19. But that requirement was not a condition on a voluntary financial benefit; the organizations had to disclose the information just "[t]o solicit contributions in California." *Id.* at 600. In other words, organizations could not exercise their First Amendment rights unless they reported contributor information to the government. As a

result, the Supreme Court analyzed the California law as a traditional "compelled disclosure" law and thus applied "exacting scrutiny." *Id.* at 607 (citing *Buckley v. Valeo*, 424 U.S. 1, 64 (1976)). The California requirement was one in a long line of requirements that simply required the disclosure of information. *See id.* at 606-07 (citing *e.g.*, *NAACP v. Ala.,* 357 U.S. 449 (1958)).

By contrast, "tax exemptions and deductions" are "a matter of grace." *TWR*, 461 U.S. at 549. There is nothing compulsory about § 501(c)(3). *Cf. Ark. Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 237 (1987) (Scalia, J., dissenting) ("The reason that denial of participation in a tax exemption or other subsidy scheme does not necessarily 'infringe' a fundamental right is that – unlike direct restriction or prohibition – such a denial does not, as a general rule, have any significant coercive effect."). Congress does not abridge an organization's First Amendment rights when it imposes conditions on the benefit of tax exemption – the organization can choose to exercise its First Amendment rights unfettered by Congressional conditions simply by foregoing the double subsidy. Indeed, when the Supreme Court decided *AFP*, it acknowledged the distinction between California's mandatory regime and the § 6033(b)(5) reporting requirement in light of *TWR*: "revenue collection efforts and conferral of tax-exempt status may raise issues not presented by California's disclosure requirement, which can prevent charities from operating in the State altogether." *AFP*, 594 U.S. at 618 (citing *TWR*, 461 U.S. at 545).

To be sure, the Supreme Court has also scrutinized certain conditions that seek to leverage funding conditions to control speech beyond the scope of a federal program. "In some cases, a funding condition can result in an unconstitutional burden on First Amendment rights." *Agency for Int'l Dev.*, 570 U.S. at 214. Specifically, a condition cannot "reach outside" a funding program to control speech. *Id.* at 217. "[T]he relevant distinction . . . is between conditions that define the limits of the government spending program . . . and conditions that

seek to leverage funding to regulate speech outside the contours of the program itself." *Id.* at 214-15. To illustrate, the government could not condition the receipt of federal funds by requiring that "recipients adopt—as their own—the Government's view on an issue of public concern." *Id.* at 218 (invalidating condition requiring recipients of HIV-prevention funds to espouse public positions concerning prostitution). But the government could restrict recipients of funds aimed at assisting in voluntary family planning projects from using those funds "in programs where abortion is a method of family planning." *Rust v. Sullivan*, 500 U.S. 173, 180-81 (1991). And the government could further impose administrative requirements to ensure that funded projects were "physically and financially separate" from projects engaged in prohibited activities. *Id.*; *see also United States v. Am. Library Ass'n*, 539 U.S. 194, 212 (2003) (plurality opinion) (upholding requirement that public libraries install Internet filter software as a condition of federal funding to ensure that the funding did not subsidize access to pornography).

The substantial-contributor reporting requirement does not reach beyond the § 501(c)(3) program to control speech. Indeed, because the reporting requirement does not apply to any non-§ 501(c)(3) affiliates that an organization may choose to have, the requirement is necessarily limited to the contours of the § 501(c)(3) program itself. The substantial-contributor reporting requirement is thus an administrative requirement just like the materially similar disclosure requirement in *Lewis Publishing* and the administrative requirements in *Rust* and *American Library Association*. Therefore, it is subject to rational basis review.

## II. The Substantial-Contributor Reporting Requirement Is Valid Under Rational Basis Review

Under rational basis review, "those attacking the rationality of the legislative classification have the burden 'to negative every conceivable basis which might support it.'" *FCC v. Beach Commc'ns, Inc.*, 508 U.S. 307, 315 (1993) (quoting *Lehnhausen v. Lake Shore*

*Auto Parts Co.*, 410 U.S. 356, 364 (1973)); *see also Sanchez v. Off. of State Superintendent of Educ.*, 45 F.4th 388, 396 (D.C. Cir. 2022) ("At the motion-to-dismiss stage, then, the plaintiff must plausibly allege facts showing that no reasonably conceivable state of facts could provide a rational basis for the challenged policy.").

YAF cannot come close to doing so.

The substantial-contributor reporting requirement is rationally related to the government's legitimate interests underlying the § 501(c)(3) program. The requirement implicates only a small subset of donors (*i.e.*, those whose contributions are $5,000 or 2% or more of the organization's total donations for the year—in YAF's case, those who contribute over $700,000, *see* n.3, *supra*) for a subset of tax-exempt organizations (*i.e.*, those that have opted into a tax-exempt status under § 501(c)(3) and are not subject to an exception based on size or religious status).

The requirement also directly relates to the IRS's administration of the § 501(c)(3) regime, including the related charitable contribution deduction under § 170. It provides a snapshot of critical information for enforcement of the Code's anti-self-dealing rules and other statutory restrictions on § 501(c)(3) organizations, and for confirming the propriety of charitable deductions taken by substantial contributors. In fact, Congress specifically added the § 6033(b)(5) reporting requirement to "facilitate meaningful enforcement" of "self-dealing rules and other provisions" limiting tax-exempt organizations under § 501(c)(3). 1969 U.S.C.C.A.N. 1645, 1681.

Section 6033(b)(5)'s reporting requirement is closely tied to Congressional limitations on the § 501(c)(3) regime. At its most basic level, reporting substantial contributors to the IRS serves to confirm that those who are claiming large charitable-contribution deductions on their

income tax returns actually made the claimed contributions. The charitable-contribution deduction is one of the largest federal tax expenditures, and having a third party to confirm substantial contributions can be a valuable enforcement tool for the IRS. *See* Joint Comm. on Taxation, *Estimates of Federal Tax Expenditures for Fiscal Years 2024–2028*, JCX-48-24, at 30–32 (Dec. 11, 2024).

In addition, the reporting requirement directly relates to the rule against private inurement. A key restriction on § 501(c)(3) status is that "no part of the net earnings . . . inures to the benefit of any private shareholder or individual," defined as "persons having a personal and private interest in the activities of the organization," which may include substantial contributors. 26 U.S.C. § 501(c)(3); 26 C.F.R. § 1.501(a)-1(c). Substantial contributors are potential parties to private inurement because they can exercise influence over the organization, by virtue of the size of their contributions. Indeed, the intertwined relationship between the substantial-contributor reporting requirement and the Code's self-dealing rules is emphasized in § 6033's legislative history. *See* 1969 U.S.C.C.A.N. 1645, 1681 ("[T]here will have to be shown on each information return *the names and addresses of all substantial contributors*, directors, trustees, and other management officials—*all of whom are 'disqualified persons' for purposes of the new self-dealing rules and other provisions*—and of highly compensated employees.") (emphasis added).

Furthermore, information about substantial contributors directly relates to whether a § 501(c)(3) organization is properly classified as a public charity as opposed to a private foundation. As noted above, one way to be classified as a public charity is to satisfy the public-support test, which limits or excludes support from substantial contributors as public support. *See* 26 U.S.C. §§ 170(b)(1)(A)(vi); 509(a)(1); 509(a)(2)(A); 4946(a)(1)(A) ("disqualified

person" includes "substantial contributor"); 26 C.F.R. § 1.170A-9(f)(6)(i) (defining support from general public). Another way is to be a "supporting organization" of one or more public charities under § 509(a)(1) or (2). *See* 26 U.S.C. § 509(a)(3); *see also Quarrie Charitable Fund*, 603 F.2d at 1277–78 ("Public charities were excepted from private foundation status on the theory that their exposure to public scrutiny and their dependence on public support would keep them from the abuses to which private foundations were subject. Supporting organizations are similarly excepted in so far as they are subject to the scrutiny of a public charity."). However, a § 501(c)(3) organization cannot qualify as a supporting organization if it is controlled directly or indirectly by a "disqualified person," which, as set forth in the statute, includes a "substantial contributor." 26 U.S.C. §§ 509(a)(3)(C), 4946(a)(1)(A); *see* 26 U.S.C. § 507(d)(2).

Finally, the reporting requirement directly relates to § 4958, which imposes excise taxes for "excess benefit transactions" on public charities' managers and "disqualified persons" who receive a benefit from certain tax-exempt organizations. Disqualified persons include anyone "in a position to exercise substantial influence over the affairs of the organization." 26 U.S.C. § 4958(f)(1)(A). These include substantial contributors. *See* 26 C.F.R. § 53.4958-3(e)(2)(ii); 26 U.S.C. § 4958(c)(3)(B) (excise tax on certain transactions involving substantial contributors to supporting organizations).

Aside from these direct statutory links between the § 6033(b)(5) substantial-contributor reporting requirement and the enforcement of the § 501(c)(3) regime, the requirement has an additional connection: its deterrent effect. In our "self-assessment tax system" built on "voluntary compliance," *G.M. Leasing Corp. v. United States*, 429 U.S. 338, 350 (1977), it is widely accepted as a matter of tax policy that a reporting requirement discourages misbehaving taxpayers. *E.g.*, Thomas, *User-Friendly Taxpaying*, *supra*; Lederman, *Reducing Information*

*Gaps to Reduce the Tax Gap*, *supra* n.4. In particular, the § 6033(b)(5) reporting requirement discourages individual taxpayers from claiming inaccurate charitable deductions on their returns to potentially sidestep tax liability and discourages tax-exempt organizations from engaging in self-dealing and other violations of the § 501(c)(3) statutory restrictions. In all of these ways, the substantial-contributor reporting requirement directly relates to the IRS's administration and enforcement of the § 501(c)(3) regime.

## III. Even Under Exacting Scrutiny, § 6033(b)(5)'s Substantial-Contributor Reporting Requirement Is Constitutional as a Matter of Law

Even under an exacting-scrutiny analysis, § 6033(b)(5)'s substantial-contributor reporting requirement passes constitutional muster as a matter of law. "[E]xacting scrutiny requires that there be 'a substantial relation between the disclosure requirement and a sufficiently important governmental interest,' and that the disclosure requirement be narrowly tailored to the interest it promotes." *AFP*, 594 U.S. at 611 (citations omitted). In contrast to California's reporting requirement in *AFP*, the § 6033(b)(5) reporting requirement satisfies that standard because it is substantially related to an important government interest (*i.e.*, revenue collection and enforcement of the § 501(c)(3) statutory restrictions) and is narrowly tailored to promote this interest.

### *A. Section 6033(b)(5) is substantially related to an important government interest.*

The substantial-contributor reporting requirement substantially relates to the government's interest in revenue collection and enforcement of the Code's charitable exemption laws. Congress adopted this requirement in 1969 as part of a larger overhaul of the laws surrounding § 501(c)(3) tax exemption after observing widespread abuse of the charitable exemption for non-charitable purposes. Congress designed the new requirements to "provide the

Internal Revenue Service with the information needed to enforce the tax laws" only after concluding "that more information is needed." S. Rep. No. 91-552 (1969), *reprinted in* 1969 U.S.C.C.A.N. 2027, 2080. Congress's addition of the substantial-contributor reporting requirement in particular was intended to "facilitate meaningful enforcement" of "new self-dealing rules and other provisions" regulating § 501(c)(3) organizations. H.R. Rep. 91-413 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1681.

As discussed above, the identities of substantial contributors help ensure compliance with Congressional requirements for § 501(c)(3) organizations. Because substantial contributors are in a position to exercise influence over the organization, their role is addressed in several places in the Code. For instance, their identities can help inform whether the organization can be classified as a public charity as opposed to a private foundation. *See* 26 U.S.C. §§ 509(a); 170(b)(1)(A)(vi); 4946(a)(1)(A). This information also directly relates to whether § 4958 excise taxes for "excess benefit transactions" are owed. 26 U.S.C. § 4958(c)(1)(A) (transaction with disqualified person); § 4958(c)(3)(A), (B) (supporting organization and substantial contributor); § 4958(f)(1)(A) (disqualified person); 26 C.F.R. § 53.4958-3(e)(2)(ii) (substantial contributor). And the substantial-contributor information substantially relates to whether an organization might be classified as a "supporting organization," which is not permitted if the charity is controlled directly or indirectly by a "disqualified person," including a "substantial contributor." 26 U.S.C. §§ 509(a)(3)(C); 4946(a)(1)(A); *see* 26 U.S.C. § 507(d)(2).

*B. Section 6033(b)(5) is narrowly tailored to the interest it promotes.*

The substantial-contributor information likewise is narrowly tailored to provide the IRS with sufficient information to further its mission of revenue collection and monitoring the propriety of tax exemption and charitable deductions. For one thing, it applies to only a subset of § 501(c)(3) organizations. Congress does not require reporting by churches or public charities

with gross receipts normally not more than $50,000. 26 U.S.C. § 6033(a)(3); 26 C.F.R. § 1.6033-2(g)(1). For another, the condition is limited to a small subset of contributors: generally, those who contribute $5,000 during the year, and in the case of organizations that meet the regulatory test for broad public support such as YAF, those who contribute more than 2% of the organization's total contributions during the year (minimum of $5,000). 26 U.S.C. §§ 6033(b)(5), 507(d)(2)(A); 26 C.F.R. §§ 1.6033-2(a)(2)(ii)(F) and -2(a)(2)(iii)(A). In other words, the reporting requirement applies only to those contributors most likely to influence the organization and those who can claim significant charitable deductions on their individual returns. In this case, as noted above, based on its most recent reported total contributions, YAF was required to disclose only the identities of those who contributed $765,318 or more.

Moreover, the reporting is not over-inclusive. Substantial contributors, by definition, are potential parties to private inurement, self-dealing, and other impermissible uses of the § 501(c)(3) charitable exemption. *See, e.g.*, 26 U.S.C. § 4958(f)(1)(A). Further, the information is for "revenue collection efforts and conferral of tax-exempt status" and is reported to the IRS, *i.e.*, the bureau responsible for administering the tax deductions and tax exemptions to which the information directly relates (and for keeping the information confidential under federal law). *See AFP,* 594 U.S. at 618 (citing *TWR*, 461 U.S. 540).

Section 6033(b)(5) is narrowly tailored for the additional reason that any alternatives are insufficient to accomplish Congress's purpose. In *AFP*, the Court observed that "a reasonable assessment of the burdens imposed by disclosure should begin with an understanding of the extent to which the burdens are unnecessary," which includes consideration of whether "various narrower alternatives proposed by the plaintiffs were inadequate." *AFP*, 594 U.S. at 611. As previously noted, § 6033(b)(5) was enacted in 1969 only after Congress had determined that the

IRS did not have sufficient information to enforce the rule against private inurement and other limitations on § 501(c)(3) organizations. H.R. Rep. 91-413 (1969), *reprinted in* 1969 U.S.C.C.A.N. 1645, 1681; *see generally* Philip Hackney, *The 1969 Tax Reform Act & Charities: Fifty Years Later*, 17 PITT. TAX. REV. 235 (2020). Examining organizations on a case-by-case basis had failed to deter the rampant abuse that the 1969 tax reform was designed to stamp out. As the nonpartisan Joint Committee on Taxation explained, the "primary purpose" of the newly enacted information-reporting requirements "was to provide the Internal Revenue Service with the information needed to enforce the tax laws." Joint Comm. on Taxation, *General Explanation of the Tax Reform Act of 1969*, JCS-16-70, at 52 (Dec. 3, 1970). Thus, any burden imposed by § 6033(b)(5)'s reporting requirement is not "unnecessary" because Congress long ago determined that narrower alternatives were "inadequate." *Contrast AFP*, 594 U.S. at 611. This reporting regime has stood the test of time. Although Congress has had almost 60 years to reconsider that determination, it has not done so.

Any alternatives to this approach would be inadequate and might result in more burdens upon compliant charitable organizations and donors because the IRS would lack this helpful diagnostic snapshot. The IRS does not have the resources to examine every § 501(c)(3) organization for possible violations regarding its substantial contributors. And, as noted above, upfront information reporting itself fosters compliance with the requirements associated with § 501(c)(3), obviating the need for IRS enforcement action.

No other information required to be reported by § 6033(b) can serve as an adequate substitute. Section 6033(b) requires the reporting of gross income, expenses, disbursements, and the names and addresses of foundation managers and highly compensated employees, but none of that information reveals the identities of substantial contributors, who are in a position to exert

significant influence over the organization and are potential parties to impermissible private inurement. As substantial contributors, too, these individuals can separately claim charitable deductions for their contributions under § 170 to reduce their individual income tax liability. The substantial-contributor reporting requirement sheds light on both aspects of the twofold tax subsidy of § 501(c)(3) status (*i.e.*, tax exemption and tax-deductible contributions) and cannot be replicated through any other information collected under § 6033(b).

Thus, even if the Court were to (erroneously) apply exacting scrutiny, YAF would still have failed to state a claim.

## CONCLUSION

The Court should dismiss YAF's claims. A proposed order is submitted herewith.

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Respectfully submitted,

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