September 8, 2023

Via Electronic Mail

The Honorable Jason Smith
Chairman,
House Ways and Means Committee
1139 Longworth House Office Building
Washington, DC 20515

The Honorable David Schweikert
Chairman,
Oversight Subcommittee
1139 Longworth House Office Building
Washington, DC 20515

waysandmeansRFI@mail.house.gov

RE: Request for Information on Understanding and Examining Political Activities of Internal Revenue Code § 501 Organizations

Dear Chairman Smith and Subcommittee Chairman Schweikert:

On behalf of National Taxpayers Union Foundation ("NTUF"),[1] I submit these written comments to the Request for Information ("RFI") from the House Ways and Means Committee.[2] As a nonprofit organization that regularly works with, studies, and litigates in matters involving tax agencies, we can offer a perspective focused both on tax and First Amendment law for the Committee's consideration. As you know, NTUF has maintained an abiding interest not only in tax policy, but also tax administration—the mechanics of how the tax law and the agency charged with its implementation can function most efficiently and effectively for the taxpayers it serves.

The problem before the Committee's RFI combines several of our concerns over tax administration. Chief among them is a combination of workload and expertise: the Internal Revenue Service ("IRS" or "Service") finds itself overburdened in trying to police political activity. The IRS should look to other expert agencies, particularly the Federal Election Commission ("FEC"), for guidance, since the FEC has the lived experience of litigating questions of regulation of speech and politics for decades. This recommendation notwithstanding, any modification of the laws must recognize the First Amendment's robust protections for privacy of association.

[1] Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts—upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce. NTUF staff have testified and written extensively on the issues of this Request for Information.

[2] U.S. House of Representatives, Committee on Ways and Means, Request for Information: Understanding and Examining the Political Activities of Tax-Exempt Organizations under Section 501 of the Internal Revenue Code (Aug. 14, 2013).

122 C Street N.W., Suite 700 | Washington, D.C. 20001 | P: (703) 683-5700 | F: (703) 683-5722 | www.ntu.org/foundation

I. Complex IRS Definitions of "Political Activity" Create Arbitrary Enforcement.

Questions 1 and 2 of the RFI ask whether the whether the IRS should "issue updated guidance" on what constitutes restricted "political campaign intervention" by Section 501(c) organizations. Relatedly, Question 9 asks about exempt organizations that "have the true purpose of influencing elections in favor of one political party." The IRS ultimately cannot manage regulation of political activity at all, and its current system is unworkable. Worse, once something is enshrined into the tax laws and regulations, challenging them later is exceedingly difficult—as the so-called "Tea Party" groups found out a decade ago.

As it currently stands, for tax-exempt organizations, what constitutes "political activity" is vitally important. But the Internal Revenue Code ("IRC") does not define the term. Worse, the Treasury Regulations employ an *eleven-factor* test to try to figure out what is and is not "political activity." This complex test chills core First Amendment activity by exempt organizations *and* is unworkable for the IRS to apply in practice.

How to define "political activity" for nonprofit organizations is essential to applying the tax code but troublesome to do in the real world. The scope of a nonprofit's permissible ventures turns on the extent to which the IRS will consider them "political activity." Section 501(c)(3) groups cannot support or oppose a candidate.[3] By contrast, § 501(c)(4) organizations are "operated exclusively for the promotion of social welfare,"[4] which the IRS has defined as being "primarily engaged in promoting in some way the common good and general welfare of the people of the community."[5] Activity in support of or opposition to a candidate is not "promotion of social welfare," but is permissible so long as it does not become the organization's primary purpose.[6] Just as with § 501(c)(4) status, the question of § 527 status is one of primary activity.[7] That is, a § 527 organization need not engage solely in "political activity," and may undertake other projects such as educational workshops or social activities,[8] but its main function must be political advocacy if it is to maintain its tax status.

But while these statutory distinctions pose few implications for federal revenue, they turn on nonobvious terms like "political activity" and "primary" purposes, and these terms must be interpreted by the IRS. The Service has responded with a complex, *eleven-factor* approach known as the "facts and circumstances" test.[9] The complexity of this test has a palpable impact on exempt organizations, particularly considering the penalties assessed for violating the tax laws.

The Service's test is difficult to decipher, and its uncertainties will inevitably leave speakers wondering if their words will be interpreted by the IRS as "political activity." Consequently,

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[3] 26 U.S.C. § 501(c)(3) (banning "participat[ion] in, or interven[tion] in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office").

[4] 26 U.S.C. § 501(c)(4)(A).

[5] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(i).

[6] 26 C.F.R. § 1.501(c)(4)-1(a)(2)(ii).

[7] 26 U.S.C. § 527(e)(1); 26 C.F.R. § 1.527-2(a)(1) (both defining a political organization as one "organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures" for political activity).

[8] 26 C.F.R. § 1.527-2(a)(3).

[9] IRS Rev. Rul. 2004-6, 2004-4 I.R.B. 328, 330 (Jan. 26, 2004); *cf.* IRS Rev. Rul. 2007-41, 2007-25 I.R.B. 1421 (June 18, 2007) (applying the "facts and circumstances" test to twenty-one situations).

groups are likely "to steer far wide[] of the unlawful zone."[10] As the Supreme Court observed in *Buckley v. Valeo,* laws regulating speech must be drafted with precision, otherwise they force speakers to "hedge and trim" their preferred message.[11] Additionally, "[p]rolix laws chill speech for the same reason that vague laws chill speech: People of common intelligence must necessarily guess at the law's meaning and differ as to its application."[12]

The Supreme Court recognized the independent First Amendment harm imposed whenever a federal agency "create[s] a regime that allows it to select what political speech is safe for public consumption by applying ambiguous tests."[13] The Service's eleven-factor "facts and circumstances" test, which embraces rather than "eschew[s] 'the open-ended rough-and-tumble of factors,'" is just such a regime.[14] Indeed, twelve years ago the Supreme Court held that the FEC's similar eleven-factor test failed First Amendment review.[15] And the anticipated chill is all the more likely given the severe tax penalties imposed for guessing wrong on whether the activity is permissible.[16]

The IRS staff itself cannot even apply the regulations correctly or consistently, instead defaulting to key word searches and other problematic short cuts. A National Taxpayer Advocate's Special Report confirmed that there are enormous problems with the current facts and circumstances test, stating that "[t]here is very little guidance to help the IRS determine whether an organization is operating" within the parameters of the Internal Revenue Code. [17] This leads to errors and scandal. The Treasury Inspector General for Tax Administration (TIGTA) reported that the IRS targeted "Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions."[18] And it turned out the program had errors affecting organizations across the ideological spectrum, though many conservative groups were hit hardest.[19]

[10] *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972) (internal citations omitted).

[11] 424 U.S. 1, 43 (1976) (per curiam) (quoting *Thomas v. Collins*, 323 U.S. 516, 535 (1945)); *see also Reno v. Am. Civil Liberties U.*, 521 U.S. 844, 871-72 (1997) (noting that "[t]he vagueness of . . . a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech."); *cf. Fed. Commc'ns Comm'n v. Fox TV Stations, Inc.*, 567 U.S. 239, 254-55 (2012) (quoting *Reno*).

[12] *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 324 (2010) (quotation marks and citation omitted).

[13] *Id*. at 336.

[14] *Id*. (quoting *Fed. Election Comm'n v. Wis. Right to Life, Inc.*, 551 U.S. 449, 469 (2007) (Roberts, C.J., controlling op.).

[15] *Id*. (noting that Federal Election Commission's "11-factor test" to determine whether a nonprofit corporation could engage in political speech failed "First Amendment standards").

[16] *See*, *e.g.*, 26 U.S.C. §§ 4955(a)(1) and (b)(1) (penalties for 501(c)(3)'s that engage in political activity); *id*. at (a)(2) and (b)(2) (personal liability for the managers of a nonprofit engaging in political activity).

[17] National Taxpayer Advocate, Special Report to Congress: Political Activity and the Rights of Applicants for Tax-Exempt Status at 14 (June 30, 2013) *available at:* https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2020/09/Special-Report.pdf ("Special Report").

[18] Treasury Inspector General for Tax Administration, No. 2013-10-053, Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review, at i (May 14, 2013) *available at*: https://www.oversight.gov/sites/default/files/oig-reports/TIGTA/201310053fr_0.pdf; *see also id.* at 5-10 (describing the program).

[19] *See*, *e.g.*, Peter Overby, "As IRS Targeted Tea Party Groups, It Went After Progressives Too," National Public Radio (Oct. 5, 2017) *available at*: https://www.npr.org/2017/10/05/555975207/as-irs-targeted-tea-party-groups-it-went-after-progressives-too; *cf.* Kelly Phillips Erb, *IRS Targeting Scandal:* Citizens United*, Lois Lerner And the $20M Tax Saga That Won't Go Away*, Forbs (Jun. 24, 2016) https://www.forbes.com/sites/kellyphillipserb/2016/06/24/irs-targeting-scandal-citizens-united-lois-lerner-and-the-20m-tax-saga-that-wont-go-away/?sh=1fb3fb59bcd1.

As the National Taxpayer Advocate noted: "What is clear from the TIGTA report is that IRS [Exempt Organization] staff did not believe they had sufficient criteria to make fair and consistent decisions."[20] Writing better law, though, is still difficult if not done properly. Robert Bauer, the former White House Counsel to President Obama, noted in an analysis of one proposal suggesting a new rule for the IRS to apply that "[c]omplexity means hard judgments; the judgments are about sensitive political matters; and the recent controversy demonstrates, if anything, that the IRS is at risk when making judgments of this nature."[21] Simplicity is therefore the answer.

Worse, when the IRS erroneously went after conservative groups, getting into Federal court is nearly impossible thanks to jurisdictional bars like the Anti-Injunction Act. *Freedom Path, Inc. v. Internal Revenue Service*,[22] is illustrative. After the district court stripped away other bases for jurisdiction,[23] the challengers were left with facial claims against Revenue Ruling 2004-6, which uses the above-mentioned eleven-factor "facts and circumstances" test to define "political activity" for which a § 501(c)(4) organization will be taxed.[24] Ultimately, the Fifth Circuit held that a facial claim could only be applied to the text of Revenue Ruling 2004-6, not how the IRS might apply that text to particular activity, and instructed that the case be dismissed.[25]

Similarly, claims that the IRS has misappropriated private tax information are often barred.[26] NTUF has chronicled the times the IRS admitted to publishing 120,000 Forms 990-T of various charities.[27] These data leaks, and others, often result in "gotcha" pieces by groups like ProPublica.[28] The data leaks are also meant to silence groups and intimidate donors from giving to worthy civil society causes. IRS warehousing *more* information will only increase the risk.

The IRS is ill equipped to make judgment calls on what qualifies as "political activity." The existing regulatory framework—an *eleven-factor* test—is so difficult to apply that even Service employees cannot do so consistently. The Service's expertise lies in tax rates and calculation, not in campaign finance or the regulation of protected First Amendment activity.

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[20] Special Report at 14.

[21] Robert Bauer, *The IRS and "Bright Lines*," More Soft Money Hard Law Blog (May 28, 2103) http://www.moresoftmoneyhardlaw.com/2013/05/irs-bright-lines/.

[22] 913 F.3d 503 (5th Cir. 2019).

[23] *Freedom Path, Inc. v. Lerner*, No. 3:14-CV-1537-D, 2015 WL 770254 (N.D. Tx. Feb. 24, 2015) (unpublished) ("*Freedom Path I*") (dismissing claims against then-Exempt Organizations Director for lack of personal jurisdiction); 2016 WL 3015392 (N.D. Tex. May 25, 2016) (unpublished) ("*Freedom Path II*") (dismissing remaining *Bivens*, First Amendment, Fifth Amendment, and APA claims); *sub. nom. Freedom Path, Inc. v. Int. Rev. Serv.*, 2017 WL 2902626 (N.D. Tx. July 7, 2017) (unpublished) ("*Freedom Path III*") (rejecting vagueness challenge to Rev. Rul. 2004-6).

[24] *Freedom Path*, 913 F.3d at 506.

[25] *Id*. at 508.

[26] *See*, *e.g.*, *True the Vote, Inc. v. Int. Rev. Serv.,* 831 F.3d 551, 558 (D.C. Cir. 2016) (rejecting misconduct claims).

[27] Tyler Martinez, *IRS Again Fails to Protect Taxpayer Data*, NTUF (Sep. 2, 2022) https://www.ntu.org/foundation/detail/irs-again-fails-to-protect-taxpayer-data.

[28] Andrew Wilford, *ProPublica Continues to Report (Badly) on Illegally Leaked Taxpayer Data*, NTUF (Apr. 13, 2022) https://www.ntu.org/foundation/detail/propublica-continues-to-report-badly-on-illegally-leaked-taxpayer-data.

II. Regulation of Foreign Activity and Campaign Finance Disclosure is Better Left to Expert Agencies in those Fields, not the IRS.

Questions 5 through 8 in the RFI ask about money from foreign nationals donated to exempt organizations to influence U.S. elections. Tasking the IRS with this type of enforcement is unwise. The IRS is a *tax* agency, not a counter espionage agency, and has no tangible way to manage public donor disclosure of political activity generally. The solutions, therefore, to these questions already exist in the law and lie within the jurisdictions of other federal agencies.

It has long been the law "that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government."[29] But the IRS is not the proper arbiter of discovering foreign influence in elections. That best belongs to the national security apparatus. For example, the Foreign Agents Registration Act ("FARA") requires *foreign principals and their American agents* to comply with ongoing registration and reporting requirements.[30] The Attorney General is tasked with making the resulting files open for public inspection.[31] Keeping the IRS out of the business of national security should be a top priority.

But on the more general issue of donor disclosure of political activity, Congress has already provided a clear mandate that the IRS and Federal Election Commission ("FEC") work together to harmonize their regulations of organizations discussing politics and public policy.[32] Therefore, with these guidelines in place, the role of the Service is clear: collect revenue and, where possible, streamline regulation with the FEC when dealing with political activity. Getting tangled in the administrative underbrush of independently defining and regulating "political activity" will only serve to slow and frustrate the Service's mandates.

The IRS is tasked with a difficult job: enforce the tax code and guide taxpayers into properly complying with the law.[33] This role requires a multitude of specialized personnel with distinctive training in the ever-changing tax code. Every day, the Service fields calls from the public seeking help in complying with the law and regulations. The IRS forms, schedules, handouts, and web page are all designed to guide taxpayers. The Service is the agency with expertise in all things tax, but it often asks for outside help. For example, the IRS has a special Art Advisory Panel to help the Service evaluate works of art for charitable deduction purposes—a skill set far outside most Treasury employees' normal expertise.[34]

The FEC has a clear mandate to enforce the campaign finance laws, regulate political actors, and advise participants on the applications of the complex campaign finance law.[35] The FEC has spent nearly fifty years in rulemaking, drafting advisory opinions, and litigating the constitutional contours of campaign finance law. Every day, their staff answer questions about filing disclosure

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[29] *Bluman v. Fed. Election Comm'n*, 800 F. Supp. 2d 281, 288 (D.D.C. 2011) (three-judge court) *summ. aff'd* 565 U.S. 1104 (2012).

[30] 22 U.S.C. § 614(a) and (d).

[31] 22 U.S.C. §§ 614(c), 616(a).

[32] 52 U.S.C. § 30111(f); *see also* 107 Pub. L. 276 § 4; 116 Stat. 1929, 1932 (2006) (codified at 26 U.S.C. § 527 note).

[33] *See*, *e.g.*, 26 U.S.C. § 7803(a)(2).

[34] IRS, "Art Appraisal Services" *available at*: https://www.irs.gov/appeals/art-appraisal-services.

[35] 52 U.S.C. § 30106.

reports and registering as a political committee. The FEC is the expert agency for regulating political activity.

This idea of IRS deference to the FEC has the approval of the former National Taxpayer Advocate. Almost nine years ago Nina Olson, when she was still in office as Taxpayer Advocate, suggested Congress instruct the IRS to defer to the FEC on these matters: "Specifically, the FEC would have to determine that proposed activity would not or does not constitute excessive political campaign activity."[36] Therefore, in crafting any regulation of political entities, the IRS should defer to the expertise of the FEC on matters of substantive regulation of political activity and disclosure.

The Service has more than enough work to do in many specialized areas of law, ranging ranging from the energy credits provided in the Inflation Reduction Act of 2022[37] to policing and processing continued Employee Retention Tax Credit claims.[38] In addition, the IRS is in the midst of implementing a Strategic Operating Plan that will help to determine the disposition of $60 billion in additional funding it received in 2022.[39] Plus, the Service must prepare for a 2024 filing season that make or break the post-pandemic taxpayer service improvements experienced in 2023.

The core roles of the Service remain as they always were: to collect revenue and serve taxpayers. The IRS should not add to its portfolio more attempts at wading into the prolix campaign finance laws. Thus, the Service's rules on exempt organizations' political activity should be aimed at steering clear of substantive regulation of the content of the speech.

III. Protecting Donor Privacy Is Paramount.

Question 4 of the RFI asks about potential changes to IRS Form 990 to make it more complicated. While the question itself is not entirely clear on what changes are being pondered, it appears that the RFI is asking about more detailed disclosure of an exempt organization's *activity*. On adding complexity to Form 990, NTUF has long argued that Congress should *simplify* Form 990.[40] Nonprofits already struggle with hours of staff time gathering information for Form 990 and filling out its worksheets. They do not need to puzzle over new regulations on whether their civic-minded work encouraging voting and public engagement in policy is also impermissible political activity under new rules.

To the extent Question 4 asks about greater donor disclosure, NTUF tracks the important need for donor privacy,[41] applying decades of Supreme Court protections for nonprofit groups. The Supreme Court ardently protects our First Amendment rights, especially in public policy

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[36] Special Report at 16.

[37] *See*, *e.g.*, IRS, Credits and Deductions Under the Inflation Reduction Act of 2022 https://www.irs.gov/credits-and-deductions-under-the-inflation-reduction-act-of-2022#energy (listing 45 energy-related tax credits for business and individuals) .

[38] Max Shenker, *Update on ERC Claims Backlog*, Experian Employer Services (July 27, 2023) https://www.experian.com/blogs/employer-services/update-on-erc-claims-backlog/.

[39] IRS, *IRS Inflation Reduction Act Strategic Operating Plan* (Apr. 5, 2023) https://www.irs.gov/pub/irs-pdf/p3744.pdf.

[40] *See*, *e.g.*, Pete Sepp, Letter to Senate Finance Comm. and House Comm. On Ways and Means, National Taxpayers Union (Jan. 31, 2022) *available at*: https://www.ntu.org/library/doclib/2022/01/L22-01-31-Form-990-Reform-Letter.pdf.

[41] *See*, *e.g.*, Tyler Martinez, *In Defense of Private Foundations, Donor Advised Funds, and Private Giving*, NTUF (July 26, 2022) https://www.ntu.org/foundation/detail/in-defense-of-private-foundations-donor-advised-funds-and-private-giving.

discussion. In *Buckley*, the Court noted that "'a major purpose of that Amendment was to protect the free discussion of governmental affairs, . . . of course includ[ing] discussions of candidates.'"[42] The Supreme Court has also recognized the need to protect the freedom of association from undue disclosure to the government.[43] For decades, the Supreme Court has consistently shielded organizational donors and supporters from the generalized donor disclosure found in campaign finance law.

The Supreme Court's tailoring analysis in *Buckley* was straightforward: organizations with the "major purpose" of supporting or opposing candidates are also subject to campaign finance disclosure at the FEC.[44] Thus candidate committees, political committees, and issue committees are all focused on engaging in electoral politics. Generalized donor disclosure makes sense in the context of such organizations with "the major purpose" of politics because donors *intend* their funds to be used for political purposes. The IRS would put such organizations in the § 527 category.

But if an organization is *neither* controlled by a candidate *nor* has as its "major purpose" speech targeting electoral outcomes, then disclosure is appropriate only for activity that is "unambiguously campaign related."[45] That is, when (1) the organization makes "contributions earmarked for political purposes . . . and (2) when [an organization] make[s] expenditures for communications that expressly advocate the election or defeat of a clearly identified candidate."[46] Such limited disclosure is appropriate because it involves "spending that is unambiguously related" to electoral outcomes.[47] *Buckley* held that comprehensive disclosure can be required of groups only insofar as those groups exist to engage in unambiguously campaign related speech.[48]

Just two years ago the Supreme Court in a 6-3 decision continued to protect nonprofits from generalized donor disclosure to government officials. The Court recognized the long line of precedent that "compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."[49] That is because "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association," and there is a "vital relationship between freedom to associate and privacy in one's associations."[50] Therefore

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[42] *Buckley*, 424 U.S. at 14 (1976) (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)).

[43] *See*, *e.g.*, *Americans for Prosperity Found. v. Bonta*, 594 U.S. ___, 141 S.Ct. 2373 (2021) ("*AFPF*"); *Gibson v. Florida Legislative Comm.*, 372 U.S. 539 (1963); *Talley v. California*, 362 U.S. 60, 65 (1960); *Shelton v. Tucker*, 364 U.S. 479 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958).

[44] *Buckley*, 424 U.S. at 79.

[45] *Id*. at 81.

[46] *Id*. at 80 (emphasis added). Of course, the *Buckley* Court narrowly defined "expressly advocate" to encompass only "express words of advocacy of election or defeat, such as 'vote for,' 'elect,' 'support,' 'cast your ballot for,' 'Smith for Congress,' 'vote against,' 'defeat,' [and] 'reject.'" *Id*. at 80 n.108 (incorporating by reference *id*. at 44 n.52).

[47] *Id*. at 80.

[48] *Id*. at 81. While the Supreme Court upheld certain disclosure outside the major purpose framework in *Citizens United*, 558 U.S. 310, 369 (2010), it addressed only a narrow form of disclosure. The Court merely upheld the disclosure of a federal electioneering communication report, which disclosed the *entity making the expenditure* and the purpose of the expenditure. 52 U.S.C. §§ 30104(f)(2)(A) through (D). the disclosure was focused on the entity making the message and the donors who gave for that specific activity, not the organization's general donor list.

[49] *AFPF*, 141 S.Ct. at 2382 (citation omitted, brackets in *AFPF*).

[50] *Id*. (citations omitted, brackets in *AFPF*).

generalized donor disclosure will fail unless the government can prove it survives "exacting scrutiny," which "requires that there be a substantial relation between the disclosure requirement and a sufficiently important governmental interest" and "the disclosure requirement be narrowly tailored to the interest it promotes."[51] Any expansion of the existing disclosure framework would need to meet this high standard of judicial scrutiny. This will be even more strenuous for any proposal for public disclosure of nonprofit supporters.

Indeed, as we detailed to the Supreme Court in that case, Form 990's Schedule B was never intended to uncover wrongdoing and its collection of donor data is ripe for abuse.[52] Instead, Congress added the list of major contributors as a method of protecting donor information against IRS disclosure under other statutes, especially the Freedom of Information Act.[53] Unfortunately, Schedule B became a treasure trove for opposition researchers if and when it does get leaked. Warehousing the information is risky, and for little benefit. Indeed, the IRS itself found that Schedule B's general questions were useless compared to the detailed information contained in other areas of Form 990.[54] And the IRS has for decades exercised discretion to relieve a broad swath of organizations from the donor disclosure of Schedule B.[55] As a result, the IRS no longer uses Schedule B for most exempt organizations, and *forty-seven* states do not require the information either.[56]

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Thank you for considering our comments. We look forward to answering any questions and working with you and your staff to develop the necessary reforms to assure regulation of tax-exempt organizations comports with the needs of proper IRS oversight as well as the First Amendment.

Respectfully submitted,

Tyler Martinez
Senior Attorney
National Taxpayers Union Foundation

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[51] *Id*. at 2385.

[52] Brief of National Taxpayers Union Foundation and the Public Policy Legal Institute as *Amici Curiae* in Support of Petitioners, *Americans for Prosperity Found. v. Bonta*, U.S. Nos. 19-251 and 19-255 at 15 (Feb. 26, 2021) http://www.supremecourt.gov/DocketPDF/19/19-251/170004/20210226150717748_NTUF-PPLI%20Amicus%20AFPF%20TMLC%20v%20Becerra.pdf.

[53] *See*, *e.g.*, *Landmark Legal Found. v. Internal Rev. Serv.*, 267 F.3d 1132, 1135 (D.C. Cir. 2001).

[54] IRS, Tax-Exempt and Government Entities Div. "Disclosure Risk on Form 990, Schedule B and Re. Proc. 2018-38" Slide 7 (Aug. 2018) *as reprinted in* Gurbir S. Grewal, Attorney General of New Jersey, *et al.*, Letter to Sec. Steven T. Mnuchin, Appendix C (Dec 9, 2019) *available at*: https://downloads.regulations.gov/IRS-2019-0039-8296/attachment_1.pdf.

[55] IRS "Guidance Under Section 6033 Regarding the Reporting Requirements of Exempt Organizations" 85 Fed. Reg. 31959, 31960 (May 28, 2020) (collecting examples).

[56] *Id. See also* Brief of Arizona, *et al.*, *Americans for Prosperity Found. v. Bonta*, U.S. Nos. 19-251 and 19-255, at 4 (Mar. 1, 2021) *available at*: http://www.supremecourt.gov/DocketPDF/19/19-251/170569/20210301165759643_19-251%20-255%20tsac%20Arizona.pdf.