BEFORE THE

United States Department of the Treasury
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

In the Matter of:	)	
Notice of Proposed Rulemaking	)	**Docket ID: IRS-2019-0039-0001**
	)	**RIN: 1545-BN28**
Updating Information Reporting Regulations Under Section 6033 Generally Applicable to Tax-Exempt Organizations Under Section 501	)	

COMMENT OF CENTER FOR INDIVIDUAL FREEDOM

IN SUPPORT OF PROPOSED RULEMAKING UNDER SECTION 6033 TO RELIEVE CERTAIN ORGANIZATIONS FROM THE REQUIREMENT TO REPORT CERTAIN INFORMATION REGARDING THEIR SUBSTANTIAL CONTRIBUTORS

December 9, 2019

I. Introduction

The Center for Individual Freedom (hereinafter "CFIF") is a non-profit, non-partisan 501(c)(4) organization with over 300,000 grassroots supporters and activists across the United States. CFIF was established in 1998 for the purpose of safeguarding and advancing Constitutional rights and the rule of law.

As a central part of that mission, CFIF advocates for public policies that recognize and respect the freedoms enshrined in the First Amendment to the United States Constitution, including the freedoms of speech, association and petition of government. The Proposed Rulemaking currently under consideration by the Internal Revenue Service (hereinafter "IRS"), to reduce Form 990 Schedule B filing requirements for many exempt organizations, would serve to advance those freedoms, and it is on that basis that CFIF respectfully submits this Comment.

II. Discussion

As an initial matter, it's vital to acknowledge the constitutional freedoms implicated by the instant Proposed Rulemaking, and understand its merits in that context.

Namely, as the United States Supreme Court has unanimously affirmed, the First Amendment guarantees American citizens the right to engage in protected activities, and to support nonprofit organizations according to their beliefs, without fearing compulsory exposure of their sensitive private information to potentially vindictive government officials or private parties. That is precisely the right that the Proposed Rulemaking seeks to protect.

The Supreme Court squarely addressed this issue in the landmark decision *NAACP v. Alabama* (1958).[1] In that case, Alabama state officials had demanded disclosure of the NAACP's sensitive membership data. A unanimous Court, however, understood and explained how compulsory disclosure of donors, members and other sensitive donor or organizational data would cripple its ability to engage in protected First Amendment activity:

> *This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is of the same order. Inviolability of privacy in*

[1] 357 U.S. 449 (1958).

group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.[2]

On that basis, the Supreme Court ruled that compulsory disclosure of the organization's membership and other sensitive donor information imposed a deterrent and chilling effect upon the First Amendment rights of the organization and its members. "Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment," the Court concluded, and "compelled disclosure of petitioner's membership lists is likely to constitute an effective restraint on its members' freedom of association."[3]

Those concerns remain valid today. Indeed, today's technological ability to instantly identify, locate and target people across the world add resonance to the Supreme Court's logic.

Unfortunately, recent years have confirmed that such targeting by both government and private parties is all too common, solidifying the case for the Proposed Rulemaking under consideration.

As just one illustrative example, the IRS itself agreed to settle a lawsuit filed by the National Organization for Marriage (NOM) after an IRS official provided NOM's Schedule B to the adversarial organization Human Rights Campaign, which in turn proceeded to publish and publicize that information.[4] Instances of both accidental and deliberate disclosure by the IRS, as well as improper access by outside parties, can only be alleviated by removing the requirement that organizations disclose the names and other private information of donors on Schedule B forms.

While the Proposed Rulemaking under consideration would help reduce that sort of deliberate and inadvertent disclosure, it would not reduce the IRS's ability to enforce the nation's tax laws.

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2 *Id.* At 462.

3 *Id.* At 450.

4 *Politico*, "IRS Pays $50K in Confidentiality Suit," June 24, 2014. https://www.politico.com/story/2014/06/irs-nom-lawsuit-108266

First, federal law prohibits the IRS from publicizing sensitive private donor information to the public at large.[5] Accordingly, the Proposed Rulemaking would have no impact upon relevant information available to the public.

According to the IRS itself, moreover, the sensitive private information contained in Schedule B forms is unnecessary in terms of its role in enforcing the nation's tax laws. "The IRS does not need," it said, "the names and addresses of substantial contributors to tax-exempt organizations not described in Section 501(c)(3) to be reported annually on Schedule B of Form 990 or Form 990-EZ in order to carry out the internal revenue laws…"[6] Rather, the information necessary for enforcement of the nation's tax laws remains readily available via forms outside of Schedule B.[7]

Additionally, the IRS itself confirms that any additional donor or organizational information that might be necessary for investigatory or enforcement purposes remains obtainable via its normal investigatory powers.[8]

For those reasons, IRS officials such as its Director of Exempt Organizations in December 2015 have publicly suggested eliminating the Schedule B form requirement for some 501(c) classifications:

> *The IRS is considering eliminating Schedule B of the Form 990, which asks for the names and addresses of an exempt organization's contributors, and for certain information about contributions received. Tax analysts reported that, at a program sponsored by the Urban Institute, Tammy Ripperda (Director of Exempt Organizations at the IRS) questioned whether the IRS should ask for the names and addresses of contributors,*

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5 26 U.S.C. § 6104(b).

6 84 Fed. Reg. 47451.

7 See, e.g., 26 U.S.C. § 6033, 84 Fed. Reg. at 47451-52.

8 84 Fed. Reg, at 47452.

given that this information is not made public, and whether there is a need for the information from a federal tax law enforcement standpoint.[9]

Accordingly, the Proposed Rulemaking would help protect the First Amendment rights of subject organizations and their citizen donors, without negatively impacting the legally permissible handling of the nation's tax laws or 501(c) organization tax filings.

III. Conclusion

For the reasons set forth herein, CFIF supports the Proposed Rulemaking under consideration.

Respectfully submitted,

/s/ Timothy H. Lee

Jeffrey L. Mazzella
President
Timothy H. Lee, Esq.
Senior Vice President of Legal and Public Affairs
Center for Individual Freedom
1727 King Street
Suite 105
Alexandria, Virginia 22314
(703) 535-5836 (Telephone)

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[9] *Nonprofit Law Blog*, Tomer J. Inbar, "Possible End to Required Disclosure of Contributors," December 3, 2015. https://www.pbwt.com/exempt-org-resource-blog/possible-end-to-required-disclosure-of-contributors