Nos. 19-251, 19-255

In The
Supreme Court of the United States

AMERICANS FOR PROSPERITY FOUNDATION,
Petitioner,
v.
XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF CALIFORNIA,
Respondent.

THOMAS MORE LAW CENTER,
Petitioner,
v.
XAVIER BECERRA, IN HIS OFFICIAL CAPACITY AS THE ATTORNEY GENERAL OF CALIFORNIA,
Respondent.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

AMICUS BRIEF OF THE AMERICAN CENTER FOR LAW AND JUSTICE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS*

The American Center for Law and Justice (ACLJ) is an organization dedicated to the defense of constitutional liberties secured by law. ACLJ attorneys have frequently appeared before this Court as counsel either for a party, *e.g.*, *McConnell v. FEC*, 540 U.S. 93 (2003), or for amicus, *e.g., John Doe No. 1 v. Reed,* 561 U.S. 186 (2010). The proper resolution of this case is a matter of utmost concern to the ACLJ because of its dedication to First Amendment liberties, particularly in the context of grassroots political activity. Having represented 36 Tea Party and other conservative organizations from 20 states that were targeted for discriminatory treatment by the IRS because of their political views, the ACLJ urges this Court to grant review and embrace heightened protection for associational rights.

SUMMARY OF THE ARGUMENT

This case presents an ideal vehicle for reconsideration and clarification of the Court's

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*Counsel of record for the parties have filed with this Court blanket consents to the filing of amicus briefs. All counsel received timely notice of the intent to file this brief, except counsel for the Thomas More Law Center. Counsel for the Thomas More Law Center waived notice. No counsel for any party in this case authored this brief in whole or in part. No person or entity aside from Amicus, its members, or its respective counsel made a monetary contribution to the preparation or submission of this brief.

precedents addressing the threat to First Amendment associational rights from compelled disclosure. Although "exacting scrutiny" is typically applied to disclosure requirements, this Court's cases are inconsistent about what exacting scrutiny is and when it should be applied. At times, exacting scrutiny has been a distinct standard, but at other times it has shifted into strict scrutiny for reasons that are not always clear. As a consequence, confusion has prevailed in the lower courts. The Ninth Circuit's decision is one among many muddled or erroneous interpretations of exacting scrutiny review. This Court's correction and clarification is warranted.

The need for review is intensified by the exponentially increasing incidence of harassment and retaliation against those with disfavored political views. Since 2010, when this Court last considered the constitutionality of disclosure requirements, retaliation and harassment have metastasized to the point that there is a perpetual "reasonable probability" that those with unpopular political views will become targets if their identities are disclosed. The corresponding chill to the exercise of First Amendment rights weighs in favor of subjecting disclosure requirements, including the California Attorney General's donor disclosure rule, either to strict scrutiny, or at least to a clearer and more rigorous form of exacting scrutiny.

ARGUMENT

I. This Court Should Grant Review To Clarify the Appropriate Level of Scrutiny When Disclosure Requirements Threaten Associational Rights.

This Court's review is warranted to reverse the damage to associational rights from the Ninth Circuit's decision and to bring needed clarity on the appropriate level of scrutiny to be applied when First Amendment associational rights are threatened by disclosure requirements. The Ninth Circuit applied "exacting scrutiny." *Ams. for Prosperity Found. v. Becerra*, 903 F.3d 1000, 1008 (9th Cir. 2018). In this Court's precedents, exacting scrutiny has been a fluid standard that at times is indistinguishable from strict scrutiny and at other times resembles intermediate scrutiny. The division among the Circuit courts is not surprising.

A. This Court's Use of Exacting Scrutiny

"Exacting scrutiny" originated in *Buckley v. Valeo,* 424 U.S. 1, 64 (1976), which upheld disclosure requirements in the Federal Election Campaign Act of 1971. The Court referred to "exacting scrutiny" as a "strict test" derived from *NAACP v. Alabama ex rel. Patterson,* 357 U.S. 449 (1958). *Buckley*, 424 U.S. at 64–66. *NAACP* and other civil rights era cases applied strict scrutiny. 357 U.S. at 460–61 (holding that "state action which may have the effect of curtailing the freedom to associate is subject to the *closest scrutiny*")

(emphasis added); *Bates v. City of Little Rock*, 361 U.S. 516, 524 (1960) (noting the State may prevail only upon showing a subordinating interest which is "compelling"); *Gibson v. Fla. Legis. Comm.*, 372 U.S. 539, 546 (1963) (same).

Buckley defined "exacting scrutiny," however, as requiring a "substantial relationship" between a "sufficiently important government interest" and the information required to be disclosed. 424 U.S. at 64. Exacting scrutiny thus facially resembled the intermediate scrutiny applied to content-neutral regulations restricting speech, and to limits on commercial speech. *See, e.g.*, *Turner Broad. Sys. v. FCC*, 512 U.S. 622, 662 (1994) (content neutral regulations); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n,* 447 U.S. 557, 566 (1980) (commercial speech).

In addition to requiring a substantial, rather than a compelling, interest, *Buckley*'s formulation of exacting scrutiny did not explicitly articulate a least-restrictive-means requirement that is normally associated with the strict scrutiny applied in other associational rights cases. *E.g., Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Louisiana ex rel. Gremillion v. NAACP*, 366 U.S. 293, 296 (1961). Instead, the *Buckley* Court "note[d] and agree[d]" with the appellants' concession that the disclosure requirements were the least restrictive means of achieving the government's interest in "curbing the evils of campaign ignorance and corruption that Congress found to exist." 424 U.S. at 68.

Thus, the new term "exacting scrutiny" denominated a "strict" test derived from cases

applying strict scrutiny to disclosure requirements which threatened associational rights. *Id*. at 64. But the *Buckley* Court's formulation of exacting scrutiny "was more forgiving than the traditional understanding of [strict scrutiny]." *Buckley v. Am. Const. Law Found. (ACLF)*, 525 U.S. 182, 214 (1999) (Thomas, J., concurring).

In *Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 91 (1982), another campaign finance disclosure case, *Buckley v. Valeo* was extensively discussed but the Court applied strict, rather than some lesser version of exacting scrutiny. The constitutional protection against the compelled disclosure of political associations and beliefs "yield[s] only to a subordinating interest of the State that is compelling, and then only if there is a substantial relation between the information sought and an *overriding and compelling* state interest." *Id*. at 91–92 (internal citations omitted) (emphasis added). *See also Reed,* 561 U.S. at 228 (Thomas, J., dissenting) (citing *Brown* in support of the contention that "our precedents require strict scrutiny be applied to disclosure laws burdening associational rights").

Then in *ACLF*, 525 U.S. at 214, another campaign finance disclosure case, the Court held that the challenged disclosure provisions failed exacting scrutiny because they were "no more than tenuously related to the *substantial* interests disclosure serves." *Id*. at 204. The Court seemingly equated "exacting" with "strict" scrutiny, remarking later in the opinion: "Our decision is entirely in keeping with the 'now-settled approach' that state regulations 'imposing 'severe burdens' on speech . . . must be narrowly

tailored to serve *a compelling state interest*.'" *Id*. at 192 n.12 (internal citations omitted) (emphasis added). In his concurring opinion, however, Justice Thomas critiqued the majority for failing to apply strict scrutiny to each of the law's provisions. *See id.* at 206 (Thomas, J., concurring).

In several of the Court's other cases, exacting and strict scrutiny have been equated. For example, in *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), the Court held that an Ohio law prohibiting the distribution of anonymous campaign literature targeting candidate and ballot measure campaigns was unconstitutional. *Id*. at 357. Because the case involved a "limitation on political expression," "we apply *exacting scrutiny*, and . . . uphold the restriction only if it is narrowly tailored to serve an overriding state interest." *Id*. at 346–47 (internal citations and quotations omitted) (emphasis added); *see also Williams-Yulee v. Florida Bar*, 135 S. Ct. 1656, 1664 (2015) (stating "[w]e have applied exacting scrutiny to laws restricting the solicitation of contributions to charity, upholding the speech limitations only if they are narrowly tailored to serve a compelling interest"); *McCutcheon v. FEC*, 572 U.S. 185, 197 (2014) (stating that under "exacting scrutiny, the Government may regulate protected speech only if such regulation promotes a compelling interest and is the least restrictive means to further the articulated interest"); *United States v. Alvarez*, 567 U.S. 709, 724 (2012) (plurality opinion) (describing "exacting scrutiny" as the "most exacting scrutiny" and requiring the government to use the "least restrictive means" of furthering its interest); *Burson v. Freeman*, 504 U.S.

191, 198 (1993) (stating that exacting scrutiny requires the government to show that the "regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end"); *Riley v. Nat'l Fed'n of the Blind,* 487 U.S. 781, 798 (1988) (applying exacting scrutiny to North Carolina's regulation of professional fundraisers soliciting charitable donations but holding that the law was not narrowly tailored).

Yet, in its most recent decisions addressing disclosure requirements, both in and outside the campaign finance context, the Court has applied a less rigorous formulation of exacting scrutiny. *Citizens United v. FEC*, 558 U.S. 310, 366-67 (2010) (stating that exacting scrutiny "requires a substantial relation between the disclosure requirement and a sufficiently important governmental interest") (internal quotation marks and citations omitted); *Davis v. FEC*, 554 U.S. 724, 745 (2008); *Reed,* 561 U.S. at 196.

At times, the Court has suggested that exacting scrutiny is actually a shifting standard contingent on the Court's perception of the burden imposed on First Amendment rights. *Davis*, 554 U.S. at 744 (stating that under exacting scrutiny, "the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights"); *Reed*, 561 U.S. at 196 (same).

Exacting scrutiny, therefore, sometimes appears to be a distinct standard, but then other times it seemingly transmutes into strict scrutiny depending upon the Court's assessment of whether the challenged law burdens rights. As Justice Thomas

has noted, "[a] coherent distinction between severe and lesser burdens is difficult" to discern in the Court's cases. *ACLF*, 525 U.S. at 208 (Thomas, J., concurring); *Cf. Reed*, 561 U.S. at 228 (Thomas, J., dissenting) (highlighting the inconsistency between the Court's previous associational rights cases and *Reed* and stating, "unlike the Court, I read our precedents to require application of strict scrutiny to laws that compel disclosure of protected First Amendment association").

Exacting scrutiny's origins and evolution have caused significant confusion among the lower courts. This Court's clarification is needed.

B. The Confusion in the Lower Courts

This Court's inconsistent formulations of exacting scrutiny have resulted in confusion among the lower courts in compelled disclosure cases. For example, in *Master Printers of America v. Donovan*, the Fourth Circuit seemed to apply both the stricter and less rigorous formulations of exacting scrutiny. At the outset of its opinion, the court said that exacting scrutiny required "[t]he state [to] establish a 'relevant correlation' or 'substantial relation' between the governmental interest and the information sought through disclosure." 751 F.2d 700, 704 (4th Cir. 1984) (citing *Buckley*, 424 U.S. at 65). Later, however, the court recast the standard in strict scrutiny language: "To survive the 'exacting scrutiny' required by the Supreme Court, therefore, the government must show that the disclosure and reporting requirements are justified by a compelling government interest, and

that the legislation is narrowly tailored to serve that interest." 751 F.2d at 705.

Other courts followed. *See Humphreys, Hutcheson & Moseley v. Donovan*, 755 F.2d 1211, 1221 (6th Cir. 1985) (stating that the court must "determine whether this disclosure legislation is narrowly tailored to serve a compelling governmental interest"); *Wilson v. Stocker*, 819 F.2d 943, 949 (10th Cir. 1987) (striking down a law banning anonymous campaign literature and stating that exacting scrutiny requires that the law "be substantially related to a compelling governmental interest, and must be narrowly drawn so as to be the least restrictive means of protecting that interest"); *Vote Choice v. DiStefano*, 4 F.3d 26, 31–32 (1st Cir. 1993) (stating that exacting scrutiny's two-part test requires that a disclosure law "serve a compelling governmental interest," and that a "substantial nexus must exist between the served interest and the information to be [disclosed]").

By contrast, in *Minnesota Citizens Concerned for Life, Incorporated v. Swanson*, 692 F.3d 864 (8th Cir. 2012) (en banc), the Eighth Circuit did not interpret exacting scrutiny to be indistinguishable from strict scrutiny. The court acknowledged its quandary about whether and how to apply exacting scrutiny:

> We question whether the Supreme Court intended exacting scrutiny to apply to laws such as this, which subject associations that engage in minimal speech to "the full panoply of regulations that accompany status as a [PAC]." Allowing states to sidestep strict scrutiny by

> simply placing a "disclosure" label on laws imposing the substantial and ongoing burdens typically reserved for PACs risks transforming First Amendment jurisprudence into a legislative labeling exercise.

Id. at 875 (internal citations omitted). The court also questioned whether exacting scrutiny was "possibly less rigorous" than strict scrutiny, *id*. at 876, but ultimately concluded that Minnesota's disclosure provision failed exacting scrutiny. *Id*. at 876–77.

Then there is the Sixth Circuit, which may have best explained exacting scrutiny's fluidity under this Court's precedents. In *Libertarian Party of Ohio v. Husted*, 751 F.3d 403 (6th Cir. 2014), the court explained

> "Exacting scrutiny," despite the name, does not necessarily require that kind of searching analysis that is normally called strict judicial scrutiny; *although it may*. To withstand "exacting scrutiny," the Supreme Court has explained, "'the strength of the governmental interest must reflect the seriousness of the actual burden on First Amendment rights.'" The burden a ballot-access disclosure requirement imposes on a First Amendment right may be sufficiently serious as to require strict scrutiny. *However, it may not be.*

Id. at 414 (internal citations omitted) (emphasis added).

Juxtaposed is the Second, Third, and Ninth Circuits' understanding of exacting scrutiny as an immutable standard regardless of any burden on associational rights. *See Ams. for Prosperity Found.*, 905 F.3d at 1008 (holding that exacting scrutiny does not have a narrow tailoring requirement even though substantial burdens on associational rights resulted from disclosure); *Citizens United v. Schneiderman*, 882 F.3d 374, 381–82 (2d Cir. 2019) (equating exacting scrutiny with intermediate scrutiny and citing in support a commercial speech case); *Del. Strong Families v. Att'y Gen. of Del.*, 793 F.3d 304, 309 (3d Cir. 2015) (applying *Buckley*'s formulation of exacting scrutiny to a state law requiring disclosure of a charity's donors when the organization wanted to issue a voter guide before a statewide election).

Other courts, as well as legal scholars, have lamented the varying formulations of exacting scrutiny. *See, e.g.*, *Cal. Pro-Life Council, Inc. v. Getman*, 328 F.3d 1088, 1101 n.16 (9th Cir. 2003) (noting that "the Supreme Court has been less than clear as to the proper level of judicial scrutiny we must apply in deciding the constitutionality of disclosure regulations such as those in the [Political Reform Act]"); *Wash. Post v. McManus*, 355 F. Supp. 3d 272, 289 n.14 (D. Md. 2019) (stating that "[t]he Court's application of the phrase 'exacting scrutiny' has not always been exacting in its own right, leading to considerable confusion"); R. George Wright, *A Hard Look at Exacting Scrutiny*, 85 UMKC L. Rev. 207, 207 (2016) (noting that "some murkiness and ambiguity most assuredly attach to the idea of exacting scrutiny"); R. Randall Kelso, *The Structure Of Modern*

Free Speech Doctrine: Strict Scrutiny, Intermediate Review, And "Reasonableness" Balancing, 8 Elon L. Rev. 291, 377 (2016) ("[U]se of phrases like 'exacting scrutiny' has muddied the waters in terms of the exact standard of review to apply."); Jessica Levinson, *Full Disclosure: The Next Frontier in Campaign Finance Law*, 93 Denv. L. Rev. 431, 452 (2016) ("[B]ecause the exacting scrutiny standard presents serious definitional issues, it is inconsistently applied.").

Exacting scrutiny's historic fluidity renders it inadequate to deal with the pervasive chill that today threatens associational rights from disclosure requirements. A clearer and more rigorous standard is urgently needed in light of the ongoing reasonable probability of retaliation and harassment against those with disfavored political views.

II. Review Is Necessary to Forestall Further Chilling of First Amendment Associational Rights from the Dramatic Increase in Retaliation Against Those with Disfavored Political Views.

The Internet's power, combined with the toxic polarization of the day, has catapulted the value of political anonymity to its apex. "Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *Brown*, 459 U.S. at 91 (quoting *NAACP*, 357 U.S. at 462). "It is beyond debate that 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, which embraces freedom of speech." *NAACP*, 357 U.S. at 460.

In past cases, this Court has granted exemptions from disclosure requirements where the party seeking the exemption showed "a reasonable probability that the compelled disclosure of [personal information] will subject them to threats, harassment, or reprisals from either Government officials or private parties." *E.g. Brown*, 459 U.S. at 100 (holding that Socialist Workers Party had established a reasonable probability of harassment). Organizations "that have no history upon which to draw may be able to offer evidence of reprisals and threats directed against individuals or organizations holding similar views." *Buckley*, 424 U.S. at 74.

The kind of harassment described in briefs submitted to this Court in *Citizens United and Reed*[1] has increased exponentially. Given the extreme political polarization in this Country and the prevalence of doxing, there is now an ongoing "reasonable probability" of retaliation and harassment against those who hold disfavored views. Any previous consensus in the private sphere that

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[1] *E.g.*, Brief for Alliance Defense Fund as Amicus Curiae at 16–22, *Citizens United v. FEC*, 558 U.S. 310 (2010), Brief for Inst. for Justice as Amicus Curiae at 13–16, *Citizens United v. FEC*, 558 U.S. 310 (2010); Joint Appendix, *John Doe, No.1 v. Reed*, 561 U.S. 186 (2010) (No. 09-559), 2010 U.S. S. Ct. Briefs LEXIS 205 (describing instances of harassment aimed at supporters of Washington's referendum, R-71 in the Complaint for Declaratory and Injunctive Relief).

such behavior is inappropriate has substantially eroded.[2]

Officials at the highest levels of American government promote harassment and retaliation against those with disfavored political views. A few examples suffice:

A. Doxing by the Obama 2012 Reelection Campaign

Kimberly Strassel, columnist for the Wall Street Journal authored a book exposing doxing by the Obama 2012 reelection campaign. The campaign created a website entitled "Keeping GOP Honest," which publicly revealed the names of "eight private citizens who had given money to [Mitt Romney], accusing them all of being 'wealthy individuals with less-than-reputable records.'"[3] The site "singled out" each of the men, "subject[ing them] to slurs and allegations," after "bluntly claim[ing] that [they] were 'betting against America.'"[4] The site even went so far as to "outright accuse[] 'quite a few' of the men as

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[2] An exhaustive catalog of recent incidents where private citizens or organizations promoted or engaged in doxing, harassing or even violent conduct would comprise an extensive appendix to this brief. *See, e.g.*, Micaiah Bilger, *Abortion Activists Vandalize Pro-Life Pregnancy Center's Van, Slash Its Tires*, LIFENEWS.COM, (Aug. 2, 2019), https://www.lifenews.com/2019/08/02/abortion-activists-vandalize-pro-life-pregnancy-center-slash-its-vans-tires/ (noting incidents reported in 2019 against pro-life activists).

[3] *Kimberly Strassel, The Intimidation Game: How The Left Is Silencing Free Speech*, 314 (2016).

[4] *Id.* at 314–15.

having been 'on the wrong side of the law' and succeeding at 'the expense of so many Americans.'" [5]

Frank VanderSloot, a sixty-three-year-old businessman from Idaho Falls, was accused of being "litigious, combative and a bitter foe of the gay rights movement." [6] Shortly thereafter, VanderSloot discovered that an investigator was "digging to unearth his divorce records." [7] A month later, VanderSloot was "selected for examination" by the IRS, and two weeks following this, he received a notice from the Department of Labor, informing him that it was going to audit his business. [8] As Strassel concluded, the "clear" message that was sent to current or potential donors: "Donate money to Romney, and you are fair government game." [9]

B. IRS Retaliation Against Tea Party Groups

Tea party groups were "fair government game" for retaliatory treatment by the IRS in 2010. On May 14, 2013, the Inspector General of the U.S. Treasury released a report that detailed how the IRS had "singled out" conservative groups who had applied for tax-exempt status.[10] The report found that in early

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[5] *Id.* at 315.

[6] *Id.*

[7] Kimberly A. Strassel, *Strassel: Obama's Enemies List — Part II*, WALL ST. J. (July 19, 2012), https://www.wsj.com/articles/SB10000872396390444464304577537233908744496

[8] *Id.*

[9] *Id*.

[10] *New Documents Reveal Top Obama IRS Official Admitted Cincinnati Office Targeted Groups Based on 'Guilt by*

2010, the IRS "began using inappropriate criteria" that "identified for review Tea Party and other organizations . . . based upon their names or policy positions." [11] Additionally, several of these organizations "received requests for additional information . . . that included unnecessary, burdensome questions (*e.g.*, lists of donors)." [12] Although initially reported as only involving "low-level employees at an office in Cincinnati," it became evident that IRS officials in "Washington, D.C., and two other offices" were jointly involved in the effort to target conservative groups.[13]

Further, the IRS developed a "Be On the Look Out" list, which served to "flag" certain applications, including those that mentioned "patriots," those that "advocated education about the U.S. Constitution and the Bill of Rights," those that "advocat[ed] . . . to 'make America a better place to live,'" and those that

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Association', Jud. Watch (Nov. 16, 2016), https://www.judicialwatch.org/press-releases/new-documents-reveal-top-obama-irs-official-admitted-cincinnati-office-targeted-office-targeted-groups-based-guilt-association.

[11] Treasury Inspector Gen. for Tax Admin., *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, 2013-10-053 (May 14, 2013), https://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf.

[12] *Id.*

[13] Meghashyam Mali, *Report: IRS Officials in Washington Involved in Targeting Tea Party*, HILL (May 14, 2013), https://thehill.com/blogs/blog-briefing-room/news/299495-report-irs-officials-in-washington-involved-in-targeting-tea-party.

"criticized how the country [was] being run."[14] IRS screeners were also "instructed to treat 'progressive' groups differently from 'tea party' groups," which allowed progressive groups to "be approved on the spot by line agents, while those of tea-party groups could not."[15] Following a series of a lawsuits, the IRS eventually issued an apology to the plaintiffs,"[16] but the chilling effect of the IRS' conduct cannot be gainsaid.

C. Members of Congress Endorse Harassment and Doxing.

Members of Congress have endorsed harassment and doxing. Congresswoman Maxine Waters (D-CA) told a crowd during a rally in Los Angeles that "if you see anybody from [President Trump's] Cabinet in a restaurant, in a department store, at a gasoline station, you get out and you create a crowd. And you push back on them. And you tell them they're not

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[14] Dana Bash & Chelsea J. Carter, *Obama Says Some IRS Employees 'Failed,' Orders Accountability*, CNN (May 15, 2013), https://www.cnn.com/2013/05/14/politics/irs-conservative-targeting/index.html.

[15] Eliana Johnson, *'Lookout List' Not Much Broader than Originally Thought, Contrary to Reports*, Nat'l Rev. (June 25, 2013), https://www.nationalreview.com/corner/lookout-list-not-much-broader-originally-thought-contrary-reports-eliana-johnson.

[16] Emily Cochrane, *Justice Department Settles with Tea Party Groups After I.R.S. Scrutiny*, N.Y. Times (Oct. 26, 2017), https://www.nytimes.com/2017/10/26/us/politics/irs-tea-party-lawsuit-settlement.html.

welcome anymore, anywhere." [17] Waters later appeared on MSNBC saying that she had "no sympathy" for members of the Trump Administration and that "[t]he people are going to . . . absolutely harass them until they decide that they're going to tell the President, 'No, I can't hang with you.'"[18]

In that same time frame, several high level government officials, including the Secretary of Homeland Security, the Environmental Protection Agency Administrator, and the President's Press Secretary were the targets of public harassment and threats.[19]

On August 5, 2019, Representative Joaquin Castro (TX-D) tweeted an image listing the names and businesses of 44 individuals in San Antonio who were maximum donors to President Trump's 2020

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[17] James Ehrlich, *Maxine Waters Encourages Supporters to Harass Trump Administration Officials*, CNN (June 25, 2018), https://www.cnn.com/2018/06/25/politics/maxine-waters-trump-officials/index. html.

[18] *Id.*

[19] *E.g.* Matt Richardson, *Sarah Sanders Heckled by Red Hen Owner Even After Leaving, Mike Huckabee Says*, Fox News (June 25, 2018), https://www.foxnews.com/politics/sarah-sanders-heckled-by-red-hen-owner-even-after-leaving-mike-huckabee-says; Jessica Chasmar, *Protestors Descend on Kirstjen Nielsen's Home: 'No Justice, No Sleep',* WASH. TIMES (June 22, 2018), https://www.washingtontimes.com/news/2018/jun/22/protesters-descend-kirstjen-nielsens-home-no-justi/ ; Nikki Schwab, *Protestor Yells 'Fascist' at Stephen Miller Dining in Mexican Restaurant*, N.Y. POST (June 20, 2018), https://nypost.com/2018/06/20/protester-yells-fascist-at-stephen-miller-dining-in-mexican-restaurant/.

campaign.[20] The tweet read: "Sad to see so many San Antonians as 2019 maximum donors to Donald Trump — the owner of @BillMillerBarBQ, owner of the @Historic Pearl, realtor Phyllis Browning, etc. Their contributions are fueling a campaign of hate that labels Hispanic immigrants as 'invaders.'"[21]

One of the donors targeted, Israel Fogiel, stated that the release of his information felt like an "attack" on those who contributed to President Trump's 2020 campaign and that he felt "scared" that "people [were] going to come to attack [him and his wife]."[22] Donald Kuyrkendall, another named donor, shared similar concerns for the "safety of [his] three grandchildren."[23] Rep. Castro did not back down, tweeting that what he said was "true," and that the donor's contributions are "dangerous" for "brown-skinned immigrants." [24]

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[20] Shane Croucher, *GOP Congressman Shot by Left-Wing Activist Slams Joaquin Castro over Trump Donor List: 'Lives Are at Stake. I Know This Firsthand'*, NEWSWEEK (Aug. 7, 2019), https:// www.newsweek.com/joaquin-castro-steve-scalise-slams-trump-donor-list-1452945.

[21] Joaquin Castro (@Castro4Congress), TWITTER (Aug. 5, 2019, 11:13 PM), https://twitter.com/ Castro4Congress/ status/1158576680182718464.

[22] Weekend Edition Sunday, *Trump Donor Responds to Name Being Publicized*, NPR (Aug. 11, 2019), https://www.npr.org/2019/08/11/750244752/trump-donor-responds-to-name-being-publicized.

[23] Fredreka Schouten, *Uproar over Trump Donations Sparks Fresh Debate About Disclosure*, CNN (Aug. 10, 2019), https://www.cnn.com/2019/08/09/politics/equinox-joaquin-castro-trump-donors.

[24] Joaquin Castro (@Castro4Congress), TWITTER (Aug. 6, 2019, 5:57 PM), https://twitter.com/ Castro4Congress/status/1158859581063389190.

Joe Scarborough, host of MSNBC's Morning Joe and former Florida congressman, defended Castro's strategy, tweeting that "[a]ny business that donates to Trump is complicit and endorses the white supremacy he espouse[s]. . . . Donors' names are . . . newsworthy."[25]

Representative Rashida Tlaib (D-MI) also supported Castro's doxing, tweeting that "[t]he public needs to know who funds racism."[26]

D. Local Governments Endorse Retaliation Against Businesses Affiliated with Disfavored Views.

Local governments are also increasingly supportive of retaliation against businesses and organizations that are affiliated with disfavored views. On September 3, 2019, the city of San Francisco "unanimously" passed a resolution labeling the National Rifle Association as a "domestic terrorist organization," and "urg[ing] local organizations to stop doing business with the gun rights group."[27] The

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[25] Joe Scarborough (@JoeNBC), TWITTER (Aug. 6, 2019, 7:30 PM), https://twitter.com/JoeNBC/status/1158882969223946242.

[26] Rashida Tlaib (@Rashida Tlaib), TWITTER (Aug. 6, 2019, 5:49 PM), https://twitter.com/rashidatlaib/status/1158902885532540930?lang=en

[27] Jason Silverstein, *San Francisco Passes Resolution Calling NRA "Domestic Terrorist Organization"*, CBS News (Sept. 4, 2019), https://www.cbsnews.com/news/san-francisco-passes-resolution-calling-nra-domestic-terrorist-organization-2019-09-04/.

resolution also asserts that the NRA "has armed those individuals who would and have committed acts of terrorism." [28] The resolution further directs city employees to "'take every reasonable step' to limit financial and contractual relationships with the NRA."[29] Additionally, the resolution "calls on other cities, states and the federal government to do the same."[30]

Two major cities blocked a popular fast food chain from opening a restaurant at their airports because the founder of the restaurant chain supported the traditional definition of marriage.[31] New York City Mayor Bill DeBlasio urged a citywide boycott of the chain for the same reason.[32]

The threat to associational rights in this country has never been graver. Adequate protection of First Amendment associational rights requires either that

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[28] *Id.*

[29] *Id.*

[30] *Id.*

[31] Elizabeth Evans, *Chick-fil-A Banned from Second Airport in Less than 2 weeks*, Fox 7 Austin (Apr 01 2019 04:19PM CDT) http://www.fox7austin.com/popular/chick-fil-a-banned-from-second-airport-in-less-than-2-weekshttp://www.fox7austin.com/popular/chick-fil-a-banned-from-second-airport-in-less-than-2-weeks; Janelle Griffith, *San Antonio City Council Bans Chick-fil-A from Airport citing Alleged 'Legacy of Anti-LGBT behavior,* NBC (March 25, 2019, 7:41 PM EDT), https://www.nbcnews.com/feature/nbc-out/san-antonio-city-council-bars-chick-fil-airport-citing-alleged-n987191

[32] Kelly Cohen, *Mayor Bill de Blasio Urges New Yorkers to Boycott Chick-fil-A*, Wash. Examiner (May 05, 2016 12:46 PM EST), https://www.washingtonexaminer.com/mayor-bill-de-blasio-urges-new-yorkers-to-boycott-chick-fil-a

strict scrutiny, or a clearer and more rigorous formulation of exacting scrutiny, be applied to all laws that compel disclosure of protected First Amendment associations.

CONCLUSION

Amicus respectfully requests this Court to grant the petition.

Respectfully submitted,

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