ORAL ARGUMENT SCHEDULED MAY 14, 2026

Nos. 25-5241, 25-5265, 25-5277, 25-5310

In The

United States Court of Appeals

For the District of Columbia Circuit

PERKINS COIE LLP,

Plaintiff-Appellee,

v.

U.S. DEPARTMENT OF JUSTICE, *et al*.,

Defendants-Appellants.

On Appeal from the United States District Court
for the District of Columbia

BRIEF OF AMICUS CURIAE INSTITUTE FOR JUSTICE IN SUPPORT OF APPELLEES AND AFFIRMANCE

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), amicus curiae respectfully submits this certificate as to parties, rulings, and related cases. To the best knowledge of amicus curiae:

A. Except for newly filing amici in this Court, all parties, intervenors, and amici appearing before the district court and in this court are listed directly or by reference in the appellants' and appellees' briefs.

B. All rulings under review are listed in the appellants' and appellees' briefs.

C. All related cases are listed in the appellants' and appellees' briefs.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and D.C. Cir R. 26.1, amicus curiae Institute for Justice states that it is a private, non-profit civil liberties law firm operating under Section 501(c)(3) of the Internal Revenue Code. It is not a publicly held corporation, it has no parent corporation, and no corporation owns 10% or greater ownership interest in it.

Dated: April 3, 2026

/s/ Benjamin A. Field

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STATEMENT OF IDENTITY AND INTEREST OF AMICUS[1]

The Institute for Justice (IJ) is a nonprofit public interest law firm committed to defending the essential foundations of a free society by securing greater protection for individual liberty. One of the pillars of that mission is the protection and defense of Americans' First Amendment right of speech and expression. Inherent in this freedom is the ability to speak without facing retaliatory action by government actors meant to punish or suppress disfavored expression. To defend this principle, IJ regularly represents clients challenging First Amendment retaliation, including successfully before the U.S. Supreme Court in *Gonzalez v. Trevino*, 602 U.S. 653 (2024).

IJ is also concerned about the potential of compelled disclosures—like those contained in the challenged executive orders—to facilitate government retaliation against disfavored parties. IJ has litigated multiple cases defending the privacy rights of Americans against

[1] In accordance with Federal Rule of Appellate Procedure 29, no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing and submitting the brief. Fed. R. App. P. 29(a)(4)(E). All parties have consented to the filing of this brief. Fed. R. App. P. 29(a)(2).

compelled disclosures and has also published original research on the true extent to which compelled disclosures chill protected First Amendment activity.

Finally, as a public interest law firm, IJ also has a direct institutional stake in the outcome of this litigation. If governments may openly target law firms for retaliation because officials do not like their litigating positions, their clients, or their lawyers, then public interest litigation that asserts constitutional rights against the government—exactly what IJ does—would be in grave danger.[2]

[2] Pursuant to Circuit Rule 29(d), amicus states that it is filing a brief separate from other amici because IJ has distinct interests and expertise, and we do not know all amici who plan to participate in this important appeal.

SUMMARY OF ARGUMENT

We write this brief to make two points that may otherwise be obscured. First, we offer a back-to-basics perspective on First Amendment retaliation law to show that the government's position in this appeal ignores the bedrock principle that governments cannot take actions if the true reasons are retaliatory, even if similar actions might hypothetically be justifiable if taken for benign reasons. Second, we elaborate First Amendment principles around disclosure that have not received much attention in these cases even though the disclosure provisions of the executive orders are among the most troubling, and we show that those disclosure demands both trigger and fail the heightened constitutional scrutiny required by decades of precedent.

I. The government's position in this appeal is contrary to basic constitutional principles forbidding retaliation against constitutionally protected activity. The simple rule that the Supreme Court has articulated—over and over again—is that the government may not take adverse action against somebody *because* of a desire to retaliate against First Amendment-protected expression. In most First Amendment retaliation cases, including IJ's cases in that category, the fight is over

what the government's true motivation was. So it can be easy to forget the simple rule. But here, the executive orders themselves confess that they violate the constitutional rule because they openly announce that they are motivated by a desire to punish core First Amendment activity: expressing political positions with which the White House disagrees and representing clients in lawsuits that the administration doesn't like. That makes the orders unconstitutional, and it was proper for the district courts to enjoin them.

The government's arguments on appeal function by ignoring the basic rule against First Amendment retaliation. All of its arguments are basically asking this Court to ignore the written admissions of retaliatory motivation, or to hypothesize that similar actions could hypothetically have been taken on non-retaliatory grounds. But this misses the point: The First Amendment bars actions that were *actually* taken to retaliate against protected speech, petitioning, and association. Perhaps in the future the government may take some adverse action similar to what's contemplated in the executive orders for good reasons through a non-retaliatory process. Those future actions can be considered on their own terms. But the executive orders challenged here are openly motivated by

retaliatory animus, and so they are wholly unconstitutional and were correctly enjoined accordingly.

II. All of these retaliation concerns are magnified by Section 3 of the challenged orders, which requires all government contractors to disclose any business they do with the plaintiff law firms. As the Supreme Court has recognized for decades, compelled disclosure is a potent tool for chilling political speech and association. For that reason, groups across the political spectrum have long argued that the First Amendment imposes meaningful limits on the government's power to compel disclosure, specifically to protect Americans from official retaliation. The administration's undisguised retaliatory motive for demanding these disclosures shows that these First Amendment limits remain vital today.

ARGUMENT

I. The Executive Orders Must Fall In Their Entirety Because They Are Wholly Infected By Unconstitutional Retaliatory Animus Against Speech, Petitioning, And Association.

We show that the executive orders violate basic First Amendment principles in their entirety in two steps. First, we elaborate the basic constitutional rule: Governments can't take adverse actions *because* of a desire to retaliate against protected speech and petitioning. Second, we explain that because the executive orders are openly motivated by such

illegitimate retaliatory animus, they are wholly unconstitutional—even if some hypothetical neutral government actor could take similar actions for more legitimate reasons.

A. The First Amendment rule is simple: The government can't act *because* of a desire to retaliate against First Amendment-protected activity.

"The First Amendment prohibits government officials from subjecting an individual to retaliatory actions for engaging in protected speech." *Nieves v. Bartlett*, 587 U.S. 391, 398 (2019) (cleaned up). As the Supreme Court has long explained, that means that if protected speech is a "substantial" or "motivating" factor behind the government's adverse action against an individual—i.e., if protected speech is a "but-for" cause of the adverse action—that is unconstitutional. *E.g.*, *Mt. Healthy City Sch. Dist. Bd. of Educ. v. Doyle*, 429 U.S. 274, 285-87 (1977). In other words, if the government's adverse action "would not have been taken absent the retaliatory motive," it's unconstitutional. *Nieves*, 587 U.S. at 399.

Simply put, the government cannot act against somebody *because* that person is engaging in First Amendment-protected activity. The

Supreme Court has reiterated that same simple rule, again and again. For instance:

- "A government official can share her views freely and criticize particular beliefs. . . . What she cannot do, however, is use the power of the State to punish or suppress disfavored expression." *NRA v. Vullo*, 602 U.S. 175, 188 (2024).

- "[N]o one before us questions that, as a general matter, the First Amendment prohibits government officials from subjecting individuals to 'retaliatory actions' after the fact for having engaged in protected speech." *Houston Cmty. Coll. Sys. v. Wilson*, 595 U.S. 468, 474 (2022) (cleaned up).

- "[T]he First Amendment prohibits government officials from retaliating against individuals for engaging in protected speech." *Lozman v. City of Riviera Beach*, 585 U.S. 87, 90 (2018).

- "Official reprisal for protected speech 'offends the Constitution [because] it threatens to inhibit exercise of the protected right,' . . . and the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." *Hartman v. Moore*, 547 U.S. 250, 256 (2006) (brackets in original) (quoting *Crawford-El v. Britton*, 523 U.S. 574, 588 n.10 (1998)); *see also Gonzalez v. Trevino*, 602 U.S. 653, 662 (2024) (Alito, J., concurring) ("[T]he law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out." (quoting *Hartman*, 547 U.S. at 256)).

These statements all reflect the same simple rule. If an American engages in First Amendment-protected speech, and the government takes retaliatory action *because* of that speech, that violates the Constitution. It doesn't matter if some hypothetical government actor

could have done the same thing for legitimate reasons if, in fact, the adverse action was *actually* taken because of a desire to punish speech.

That isn't a rule distinct to retaliation cases, but rather reflects a general principle of the First Amendment. Just as in after-the-fact retaliation cases, First Amendment challenges to speech-restricting laws turn on whether there are indications the government is regulating expressive activity *because* it doesn't like a particular speaker or content. Thus, laws that draw content-based lines—those "target[ing] speech based on its communicative content—are presumptively unconstitutional." *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Likewise, government cannot impose licensing requirements on speech that "vest[] . . . unbridled discretion in a government official" to grant a license or permit. *Forsyth County v. Nationalist Movement*, 505 U.S. 123, 133 (1992). That's because without "precise and clear standards," "the danger of censorship and of abridgment of our precious First Amendment freedoms is too great." *Se. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 553 (1975).

Both these rules reflect that courts evaluate speech-restricting laws to test whether they are restricting activity *because* the government

dislikes communicative content. Content-based laws reveal that hostility on their face. And speech-licensing laws with unbridled discretion raise too great a danger that enforcing officials will wield them to suppress content and viewpoints they dislike.

As a result, both content-based laws and laws giving unbridled permitting discretion are unconstitutional from the get-go. *See Reed*, 576 U.S. at 163; *City of Lakewood v. Plain Dealer Publ'g Co.*, 486 U.S. 750, 755 (1988). It does not matter if the same expression could hypothetically be restricted by a content-neutral law, or through a carefully circumscribed licensing regime. It's just unconstitutional, full stop, to apply a law that actually does target (or allows targeting) speakers because the government doesn't like the speech.

The rules against content-based laws and discretionary prior restraints are therefore getting at the same underlying First Amendment principle as the rule against First Amendment retaliation: The government cannot take adverse action against speakers—through either ex ante written legal prohibitions, or ex post retaliatory actions—because it doesn't like what those speakers have to say. When laws or

enforcement actions target somebody *because* of their expression, that is constitutionally impermissible.

To be sure, in mixed-motive cases, the government's legitimate, non-retaliatory motives may be enough to show that its actions were sufficiently supported by benign justifications that it did not, in fact, act *because* of retaliatory animus. *See Nieves*, 587 U.S. at 398-99. For instance, if a public-school teacher is exercising his free-speech rights to criticize the school district in a call-in radio show, but also arguing with and slapping his colleagues and insulting students, then the government may well be able to show that it fired him because of the latter legitimate reasons rather than for the proscribed former reason. *See Mt. Healthy*, 429 U.S. at 281-83, 287. But if, in fact, the improper retaliatory animus is necessary to explain the government's action—i.e., it is a "but-for" cause, *see Hartman*, 547 U.S. at 256—then it does not matter if there is some additional benign reason for the adverse action.

The Supreme Court's recent decision in *NRA v. Vullo* proves the point. There, the Court held that the NRA successfully stated a First Amendment retaliation claim against a New York insurance-regulation official who targeted companies doing business with the NRA. The official

sought to defend herself by pointing out that the targeted companies had in fact violated state insurance law, which the NRA conceded. 602 U.S. at 196. It didn't matter. The fact that some hypothetical government official neutrally applying the law *could* have taken similar enforcement actions did not insulate *this* official who was credibly accused of wielding her power for retaliatory reasons. The Court was adamant the NRA would prevail if it could show that an actual but-for reason for enforcement was "in order to punish or suppress . . . protected expression." *Id.* Put differently: "[T]he contention that the [plaintiff] violated [the] law does not excuse [a defendant official] from allegedly employing coercive threats to stifle [disfavored] advocacy." *Id.*

All the foregoing establishes a simple rule: The government can't wield its power *because* of protected speech. That a hypothetical neutral official could take similar actions for non-censorious reasons does not excuse government action that is in fact motivated by retaliatory animus.

B. The executive orders must fall in their entirety because every part of them is motivated by unconstitutional retaliatory animus.

That simple rule is enough to doom the challenged executive orders here and to defeat the government's arguments on appeal. That's because

the executive orders, on their face, reveal that they are, in their entirety, motivated by retaliatory animus against First Amendment-protected activity. In other words, everything about them has retaliation as a but-for cause.

Each begins with a Section 1 that expressly says what its purpose is—indeed, for Perkins Coie that section is titled "Purpose." *See* Gov't Addendum A1-A2, A5-A6, A8-A9, A11. And in each case, that purpose is overwhelmingly retaliation against First Amendment-protected activity. Each order rails against core political speech, against litigation which lies at the core of the Petition Clause,[3] and against expressive associations. The explicit statements of retaliatory purpose are repeated or amplified in the substantive provisions of the executive orders. For instance, the Perkins Coie order expressly says that it wants to blacklist the firm from doing business with federal contractors because of its election-related speech and its positions on election administration—i.e., core political speech. *See* Gov't Addendum A3 (Perkins Coie Order § 3(a)). The other

[3] *See Borough of Duryea v. Guarnieri*, 564 U.S. 379, 387 (2011) ("[T]he Petition Clause protects the right of individuals to appeal to courts and other forums established by the government for resolution of legal disputes.").

orders say they want to blacklist the firms because they "are not aligned with American interests." *See* Gov't Addendum A6, A9, A12. And each respective Section 1 defines that it is core protected expression that is supposedly against those "American interests," including: taking on pro bono work and "partisan representations" the administration dislikes, or "supporting" policies regarding voting or military personnel that the administration opposes. *Id.* at A5, A8, A11. When the government is openly telling the world that it is taking its action to retaliate against speech, petitioning, and association, the district courts were right to listen.

The government cannot explain away or justify the executive orders' clearly impermissible declarations that they are being issued for unconstitutional purposes. And to its (limited) credit, it doesn't really try. The government doesn't even meaningfully address Section 1 of the orders until page 60 of its brief. And even then, it doesn't suggest that it is permissible for the government to take adverse action against the firms based on their speech, petitioning, and association. That is, it doesn't really defend that what Section 1 describes as being the motivating "Purpose" of the executive orders is constitutionally valid. Instead, the

arguments that the government does make ignore the simple First Amendment retaliation rule that governments may not take action because of retaliatory animus.

The government's main argument is that the executive orders' plainly unconstitutional statements of retaliatory animus are "severable" from the arguably permissible motivation of combatting illegal discrimination. *See* Gov't Br. 60. This is of a piece with the rest of the government's brief, which is essentially premised on the argument that a neutral government *might* be able to take similar actions against the firms for non-retaliatory reasons, and thus the courts should allow the government to go forward here notwithstanding the express statements of unconstitutional motivation.

But the government's argument simply ignores the basic principles of First Amendment retaliation claims just described above in Part I.A. What matters is what the *true* reason was for the government's actions—in doctrinal terms, whether retaliatory animus was a "but-for" cause of the adverse action. IJ's retaliation cases usually turn on that fact-bound question of motive, where the defendants assert a benign justification and our clients put forward evidence to prove the true retaliatory

purpose. But here, the executive orders openly announce their improper motivation, with anti-discrimination concerns as a half-hearted secondary issue. The overwhelmingly retaliatory motivation cannot be "severed" from the adverse actions because it is the motive that makes the actions unconstitutional. The district courts were correct to so hold.

The government's other main argument is even more feeble: that its admissions of retaliatory animus were just "government speech." *See* Gov't Br. 61. But nobody is suggesting that the President (or the government more broadly) isn't allowed to criticize people, or law firms, with which he disagrees. Even characterizing Section 1 of the executive orders as government speech, the problem here is that the government is asking courts to *ignore* that speech when it proves the law firms' retaliation claims. That would be like saying that the Supreme Court should have simply ignored Maria Vullo's statements of retaliatory animus just because it could be characterized as government speech. *Contra Vullo*, 602 U.S. at 182-85. As the Court said there in rejecting such a line: "A government official can share her views freely and criticize particular beliefs . . . . What she cannot do, however, is use the power of the State to punish or suppress disfavored expression." *Id.* at 188.

Nor is it unusual in the law to recognize that speech is permissible and protected on its own, but can still be dispositive evidence against the speaker. If a scammer tells his friends over drinks what rubes his marks are, expressing his disdainful opinions of them may well be fully protected by the First Amendment—but it can also be introduced as evidence at a trial targeting the fraudulent actions to prove intent. Or if a debtholder is fully paid and tells his business partner that he's received the money, that statement can simultaneously be protected free speech and *also* be valid evidence at a subsequent abuse-of-process trial if the debtholder improperly takes out execution on the already-paid debt. *Cf.* Restatement (Second) of Torts § 682 cmt. a, illus. 2 (1977). Simply put: The right to speak freely, including the government's right, does not imply a right to exclude that speech from evidence of motive in legal proceedings.

Nor is the government right to suggest that enjoining the executive orders would somehow wholly disable the government from taking valid, non-retaliatory actions in the future. *Contra* Gov't Br. 64-65. Again, First Amendment retaliation turns on motive—whether improper animus was a but-for cause of the government's action. And here, because the

executive orders are suffused with improper motive, any implementation of them is inherently suspect and properly enjoined. But nothing in the district courts' orders prohibits the government from future neutral reviews of security clearances or dispassionate consideration of job applicants. The orders just say the government can't act on the openly improper motives embodied in the executive orders.

Indeed, the government itself has effectively acknowledged that it doesn't need the executive orders to do legitimate work in protecting national security or combatting illicit discrimination. After all, before backtracking, the government was willing to voluntarily dismiss these appeals and let the injunctions stand.

A final big-picture point: It is crucial that this Court get this right, and not just for these specific egregious cases. The government's theories in this appeal would essentially gut the constitutional principle against First Amendment retaliation. In its view, the government's own statements of its motivations should be disregarded simply because they are government speech. And it says that the government should be able to act on those openly retaliatory purposes but then nevertheless evade liability by inventing hypothetical rationales that might have motivated

a hypothetical government that wasn't acting with unconstitutional motivation. If those theories are right, the only actions that would violate the First Amendment would be actions that are already unlawful for other reasons. Courts would be abandoning decades of clearly established law (*see supra* Part I.A) by making First Amendment retaliation claims impossible.

This Court should decline that invitation. It's especially important in a case like this where a prompt injunction is necessary to vindicate the First Amendment rights of the target law firms. The government argues throughout its brief that the courts should let it take further steps in implementing the retaliatory executive orders before evaluating them (or perhaps to never review them at all). *E.g.*, Gov't Br. 20, 46, 48. That is asking for a rule allowing the government to openly announce its desire to retaliate and to threaten devastating retaliatory actions that would undermine the basic functioning of the plaintiff law firms, without judicial review available for months or years (if ever). If the government gets its way and is allowed to proceed unchecked to consummate its retaliation before any court can intervene, then the First Amendment will be a dead letter. Under such a regime, governments would be free to

threaten devastating retaliation with impunity, and none but the most reckless could run the risk of standing up to them without an opportunity for immediate judicial review and injunctive relief.

That's especially true where, as here, the government is the federal government, because retrospective remedies are likely unavailable. After all, *Bivens* is a no-go. *See Egbert v. Boule*, 596 U.S. 482, 499 (2022) ("[T]here is no *Bivens* action for First Amendment retaliation."). And it's not obvious how private torts could provide a remedy through the Federal Tort Claims Act for violations of uniquely governmental duties like the First Amendment without clear private analogues. Here, the *only* meaningful relief the plaintiff law firms likely have is the kind of prompt injunctions issued by the district courts here. If the government is instead permitted to inflict massive damage against the firms before they can seek judicial protection, their First Amendment rights will be severely violated and their businesses impaired with no meaningful remedy at all. To flip around Justice Harlan's famous statement: "For people in [the law firms'] shoes, it is [a prompt injunction] or nothing." *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388, 410 (1971) (Harlan, J., concurring in the judgment).

II. The Disclosure Requirements In The Challenged Executive Orders Separately Violate The First Amendment Because They Pose An Impermissible Risk Of Official Retaliation.

The challenged executive orders are remarkable not only for the candor with which they admit the administration's retaliatory motive, but also the scope of Americans exposed to that retaliation, which extends far beyond the plaintiff law firms. That is because Section 3 of the challenged executive orders targets not just the law firms, but all federal contractors who have business with those firms. To facilitate this retaliation, Section 3 calls on contracting agencies to compel *all* government contractors to disclose *any* business they do with the plaintiff law firms.

The obvious and only purpose of these required disclosures is to pressure government contractors not to associate with the plaintiff law firms or to end existing associations with those firms. The district courts below properly enjoined these disclosures, applying the U.S. Supreme Court's established standard of exacting scrutiny, set forth in *Americans for Prosperity Foundation v. Bonta*, 594 U.S. 595 (2021). And, for its part, the government makes no genuine argument against the exacting-

scrutiny analysis employed below, choosing instead to focus on issues such as ripeness and the appropriateness of facial relief.

To the extent the government has failed to engage with the issue of exacting scrutiny, it has waived any argument that the executive orders' compelled disclosures survive First Amendment scrutiny, and this issue could be resolved on that ground alone. But the extraordinary facts of this case merit closer attention, because they vindicate concerns that speakers across the political spectrum have raised for decades about the risks inherent in compelled disclosure.

Those risks were recognized most famously in the U.S. Supreme Court's seminal decision in *NAACP v. Alabama ex rel. Patterson*. That case arose during the Civil Rights Movement, when Alabama's attorney general sought to enjoin the NAACP from conducting activities in the state for violating the state's business regulations. 357 U.S. 449, 451-52 (1958). As part of those proceedings, the government demanded a wide array of NAACP documents, including its membership list. *Id.* at 453.

The Court rejected Alabama's attempt to compel disclosure of members, finding that this disclosure would chill constitutionally protected association. *Id.* at 460-66. The Court considered it "apparent"

that compelled disclosure of the NAACP's membership list would adversely affect the NAACP's constitutional activity because it would discourage people from participating with the NAACP. *Id.* at 462-63.

Since *Patterson*, the Supreme Court has continued to recognize that compelled disclosure chills constitutionally protected activity, even when those disclosures are made only to the government and not to the public at large. In *Shelton v. Tucker*, for example, the Court considered the constitutionality of an Arkansas law that required teachers at state-supported schools to identify the organizations to which they belonged or donated. 364 U.S. 479 (1960). The Court struck the law down, holding that "[e]ven if there were no disclosure to the general public, the pressure upon a teacher to avoid any ties which might displease those who control his professional destiny would be constant and heavy." *Id.* at 486.

Patterson and *Shelton* are just two examples from the line of cases stretching back more than a half century that consistently protect the right of individuals and groups to resist government intrusion into their associations. *See also Gibson v. Fla. Legislative Investigation Comm.*, 372 U.S. 539 (1963) (holding unconstitutional a legislative-committee investigation demanding membership and donor lists); *Bates v. City of*

Little Rock, 361 U.S. 516 (1960) (striking down an ordinance requiring the disclosure of membership and donors); *Sweezy v. New Hampshire ex rel. Wyman*, 354 U.S. 234 (1957) (invalidating a state subpoena requiring a private individual to testify as to his organizational membership).

Of course, these concerns are by no means restricted to the circumstances of the Jim Crow South or the Red Scare. Nor are they limited to retaliation by one political party. On the contrary, many groups have in recent years drawn attention to the threat of political retaliation by Democratic administrations against their perceived political enemies. In *Americans for Prosperity Foundation*, for example, Amici Gun Owners of America and the Gun Owners Foundation (among others) urged the Supreme Court to reject any

> judicial presumption that governmental powers are never abused, that Attorneys General engage in nothing but evenhanded administration of the law, that politicians elected or appointed to high office cease to act as politicians, and that state office holders would never use their position to advance their own political agendas, reward their friends, or punish their enemies.

Ams. for Prosperity Found., 594 U.S. 595 (2021), Brief Amici Curiae of Free Speech Coalition, *et al.*, at 10. Such a presumption, they argued, would "disregard both history and current reality." *Id.*

And those amici were far from alone in expressing these concerns. Other notable statements about the threat of compelled disclosure included:

- "Governments have consistently compelled disclosure as a way of obtaining ammunition to target, harass, and ultimately silence unpopular voices and political enemies. Officials from the chief executive to civil servants have abused their positions by accessing citizens' sensitive information—obtained through disclosure requirements—to get them to kowtow to the government's whim." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amici Curiae Protect the 1st and Pacific Research Institute, at 4.

- "In Amici's experience, compelled disclosure of its donors' personal information will subject them to threats, harassment, or reprisals from either Government officials or private parties. It clearly affects individuals' willingness to donate. Indeed, recent widely publicized reports show that threats, harassment, or reprisals have occurred from either government officials or private parties." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amici Curiae Judicial Watch and Allied Educational Foundation, at 2.

- "[C]ompulsory disclosure of the identities of an organization's members and donors to government officials poses a powerfully chilling threat to their peace and livelihoods, because government officials wield police power of the state to expose, harass, or disadvantage them in both explicit and subtle ways. As ALEC's experience demonstrates, public officials, including United States Senators, have used public office in ways intended to ruin associations with which they disagree by demanding membership lists and threatening their members with harmful public attention or worse." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amicus Curiae American Legislative Exchange Council, at 15.

- "It is undeniable that, nowadays, exposure as a donor or supporter of disfavored causes or persons, particularly those on the conservative or traditional side of the spectrum, is like having a target painted on one's back. . . . . During the reconstruction era, Blacks and Republicans were targets. Later, it was civil rights activists. Today it is conservatives." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amicus Curiae American Center for Law and Justice, at 30 (citations omitted).

- "Donors have at least as much to fear from disclosure of their names to the State as they do from disclosure to the public at large. It is the State that has the power to arrest, audit, interrogate, and incarcerate." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amicus Curiae Institute for Free Speech, at 26.

- "Of course, even if government never discloses donor identity to third parties, donors may still legitimately fear government abuse of the information. For example, the IRS admitted that it subjected conservative political groups applying for tax-exempt status to heightened scrutiny in 2013." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amici Curiae Pacific Legal Foundation, *et al.*, at 15.

- "In fact, *sub rosa* retaliation can also be engaged in by the authorities, who, for example, can deny or delay permits, start investigations, block public contracts, or engage in other forms of retribution—much of which never makes it into court." *Ams. for Prosperity Found.*, 594 U.S. 595 (2021), Brief of Amici Curiae Goldwater Institute, *et al.*, at 29.

Not surprisingly, empirical evidence supports the commonsense intuition that mandatory disclosure chills association. In the context of campaign finance, for example, studies have found that people are less likely to make contributions if they know their personal information will

be disclosed.[4] And there is no reason to believe that the chilling effect of compelled disclosure would be any different in this case. Indeed, how much more chilling must it be when—as here—the government's retaliatory animus is not merely a hypothetical risk, but an expressed intent?

In short, the administration's remarkable candor makes clear that concerns about the association-chilling effects of compelled disclosure are as significant today as they were under any previous state or federal administration. The danger that government officials will abuse disclosure to target perceived enemies transcends both time and party lines. This Court should thus affirm the disclosure rulings below to ensure that the constitutional safeguards against that danger remain strong, no matter which way the political winds blow in the future.

CONCLUSION

The judgments of the district courts should be affirmed.

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[4] Dick M. Carpenter II, *Mandatory Disclosure for Ballot-Initiative Campaigns*, 13 Indep. Rev. 567, 575 (2009); *see also* Dick Carpenter & Jeffrey Milyo, *The Public's Right to Know Versus Compelled Speech: What Does Social Science Research Tell Us About the Benefits and Costs of Campaign Finance Disclosure in Non-Candidate Elections?*, 40 Fordham Urb. L. J. 603, 623-31 (2012) (discussing the costs of compelled disclosure in non-candidate campaign efforts).

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because it contains 5,298 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word 365 with a 14-point Century Schoolbook font.

Dated: April 3, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on April 3, 2026, I filed the foregoing Brief of Amicus Curiae Institute for Justice with the Clerk of the United States Court of Appeals for the D.C. Circuit via the CM/ECF system, which will notify all participants in the case who are registered CM/ECF users.

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