



Via First Class Mail

Letitia A. James
New York State Attorney General
Office of the Attorney General
The Capitol
Albany, New York 12224

**Re: Charities Bureau and IRS Form 990 Schedule B
Retention and Destruction**

Dear Ms. James:

I am writing on behalf of the Empire Center for Public Policy and the Institute for Free Speech to address apparent ongoing violations of First Amendment rights of organizations registered with your office's Charities Bureau.

In *Americans for Prosperity v. Bonta*,¹ decided on July 1, 2021, the United States Supreme Court concluded that the California Attorney General's requirement that charitable organizations file their IRS 990 Schedule B imposed "a widespread burden on donors' associational rights." The Court concluded that California could not justify the burden on the ground it was narrowly tailored for the Attorney General to investigate fraud or that California had an important enough interest in administrative convenience. The Supreme Court held that "up-front collection of Schedule Bs is facially unconstitutional."

¹ [210 L. Ed. 2d 716, 141 S. Ct. 2373 \(2021\)](#).

New York was one of two other states that collected Schedule Bs up-front.² Your office informally stopped collecting Schedule Bs after the Supreme Court decision and formally amended its regulations effective March 16, 2022. The Charities Bureau no longer requires the names of donors but asks for donation amounts and the donor's state location on Schedule Bs or gross amounts from New York donors on the bureau's annual filing form.

While this new regulation may or may not comport with the Supreme Court's decision in *AFP v. Bonta*, the Charities Bureau collected Schedule Bs containing donor names with annual filings for years prior to 2021. To the extent your office maintains those records today, it is placing an unjustified burden on donors' associational rights. In other words, there is an ongoing First Amendment violation.

Empire Center and Institute for Free Speech submitted Freedom of Information Law (FOIL) requests after a Schedule B with a New York Charities Bureau stamp was published in a news magazine last summer. Among other things, Empire Center requested records reflecting your office's policies for the retention and destruction of Schedule Bs. It also requested information regarding how and where the schedules are maintained, and who in your office was authorized to access the schedules.

After months of delay, you have failed to disclose records reflecting your retention and destruction policies for Schedule Bs. You also have failed to provide any information regarding how and where Schedule Bs are maintained. Nor have you provided any indication that your office knows who can access to the Schedule Bs still, presumably, kept by your office.

Based on your responses, or lack thereof, it's reasonable to conclude First Amendment violations are ongoing and you have no means of assuring other Schedule Bs will not be unlawfully disclosed from your office.

² 141 S. Ct. at 2387.

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We are writing to demand that you or your office certify destruction of Schedule Bs in your possession containing donor names in violation of the First Amendment.

Please provide such certification within 15 business days.

Yours truly,



Cameron Macdonald