

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

In the Matter of

EMPIRE CENTER FOR PUBLIC POLICY
and NEW YORKER’S FAMILY RESEARCH
FOUNDATION,

Index No.

Petitioners,

VERIFIED PETITION

-against-

LETITIA JAMES, in her official capacity as
ATTORNEY GENERAL OF NEW YORK,

Respondent.

For a Judgment Under Article 78 of the Civil
Practice Law and Rules

Petitioners Empire Center for Public Policy and New Yorker’s Family Research Foundation for their petition against Respondent Letitia James in her official capacity as Attorney General of New York (“AG James”) allege:

1. The Office of the New York State Attorney General regulates nonprofit organizations and fundraisers under its Charities Bureau.
2. New York law imposes Attorney General oversight over any organization that conducts charitable activities, holds property that is used for charitable purposes, or solicits financial or other contributions in New York.
3. Under New York law, charitable organizations operating in the state must register and file annual financial reports with the Charities Bureau.¹

¹ Executive Law § 172.

4. For at least 20 years, the Attorney General has required registered organizations to submit copies of their complete IRS Form 990s with schedules as part of their annual financial reports.

5. Those Form 990 schedules include Schedule Bs, which generally contain donor names and addresses as well as donation amounts for donors contributing \$5,000 or more in aggregate.

6. In *AFP v. Bonta*,² 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."

7. The Court concluded that California's requirement was not narrowly tailored to achieve the Attorney General's interest in investigating fraud. The Court also concluded that California's interest in administrative convenience was not compelling enough to justify the burden its requirement placed upon donors' associational rights.

8. The Supreme Court held that "up-front collection of Schedule Bs is facially unconstitutional."

9. The Supreme Court noted that New York was one of three states other than California that collected Schedule Bs up-front.³

10. The Charities Bureau purported to stop collecting Schedule Bs after the Supreme Court decision in *AFP v. Bonta*.

² 210 L. Ed. 2d 716, 141 S. Ct. 2373 (2021).

³ 141 S. Ct. at 2387.

11. The Attorney General formally amended the applicable regulations effective March 16, 2022.⁴

12. The Charities Bureau no longer requires registered organizations to provide the names of their donors in their annual filings but requires filing either “(i) a redacted Schedule B with the Charities Bureau, without the names and street addresses of the donors but including the amounts of donations and the states from which those donations were received during the reporting period, or (ii) a statement of the gross amount of contributions received during the reporting period from individuals and entities residing or domiciled in New York.”⁵

13. This new regulation does not require registered organizations to disclose donor identities.

14. The Supreme Court, however, upheld a facial challenge to California’s Schedule B disclosure requirement because none of the information contained in a Schedule B was determined to be necessary to advance the California Attorney General’s investigative, regulatory or enforcement efforts.

15. Requiring registered organizations in New York to file redacted Schedule Bs serves no investigative or enforcement purpose, yet it adds complexity to the annual filing requirement that invites errors that could lead to inadvertent disclosure of donor identities.

16. The Attorney General’s regulation continues to chill free speech.

⁴ New York State Office of the Attorney General. *Regulations Amending Requirement to File Schedule B to IRS Form 990 Promulgated*. CharitiesNYS.com. <https://web.archive.org/web/20221020180317/https://www.charitiesnys.com/schedulebnotice.html>

⁵ 13 NYCRR 91.5(c)(3).

17. Further, the Charities Bureau collected Schedule Bs containing unredacted donor names with annual filings for many years prior to 2021.

18. To the extent that the Attorney General's office maintains those records today, it is placing an unjustified burden on donors' associational rights.

19. In other words, there is an ongoing First Amendment violation.

20. The public has reason to believe the Attorney General's office does not maintain adequate security over the Schedule Bs that it may still possess.

21. Last August, an unredacted Schedule B with a New York Charities Bureau stamp was published in a *Politico* news magazine story, revealing confidential donor information for Nikki Haley's nonprofit policy advocacy group, Stand For America, Inc.

22. After the story was published, Empire Center submitted Freedom of Information Law requests asking for, among other things, records reflecting the Attorney General's policies for the retention and destruction of Schedule Bs.

23. Empire Center also requested information regarding how and where the schedules are maintained, as well as the identities of the employees within the Attorney General's office who were authorized to access the schedules.

24. After months of delay, the Attorney General has failed to disclose records reflecting its retention and destruction policies for Schedule Bs.

25. The Attorney General also has failed to provide any information regarding how and where Schedule Bs are maintained.

26. The Attorney General has not provided any indication that the Attorney General's office knows who has access to the Schedule Bs that are still, presumably, in the Attorney General's possession.

27. Based on the Attorney General's responses (or lack thereof), it is reasonable to conclude that First Amendment violations are ongoing and that the Attorney General has no means of assuring other Schedule Bs will not be unlawfully disclosed from her office.

28. The Attorney General represented to the Supreme Court that New York maintained "a rigorous multistep procedure to prevent public disclosures of Schedule Bs."⁶

29. The protocols included instructions to organizations that file online to upload Schedule Bs apart from their public filings.⁷

30. According to the Attorney General, paper form filings were reviewed page-by-page before being uploaded to the publicly available database.⁸

31. According to the Attorney General, the Attorney General's office then used software to search filings for Schedule Bs before uploading them to the public database; also, software regularly scanned "the entire database to ensure that there are no Schedule Bs publicly available."⁹

32. However, the Attorney General did not provide the Supreme Court with any information about how Schedule Bs are kept secure once electronically filed apart from Form 990s or manually separated from paper-filed Form 990s by her staff.

33. After Empire Center made its FOIL requests, the Attorney General explained to the *Newsday* editorial board that a software systems switch

⁶ Brief for States of New York, Colorado, Connecticut, Hawai'i, Illinois, Maine, Maryland, Massachusetts, Michigan, Nevada, New Jersey, New Mexico, Oregon, Pennsylvania, Rhode Island, and Virginia, and The District Of Columbia as Amici Curiae in Support of Respondent, p. 9, *AFP v. Bonta*, 210 L. Ed. 2d 716, 141 S. Ct. 2373 (2021).

⁷ *Id.*

⁸ *Id.* at 9-10.

⁹ *Id.* at 10.

caused a security break that exposed the confidential records of many nonprofits.¹⁰

34. However, the Attorney General could not explain why the confidential records of a future Republican presidential candidate's organization appeared to be the only ones disclosed to the media.

35. In recent weeks, the Attorney General admitted that "due to clerical error, a small number of charitable organizations' Schedule B to IRS Form 990 or IRS Form 990PF were inadvertently posted publicly on the Office of the Attorney General's registry of charities for a limited period of time."¹¹

36. The Attorney General provided to Empire Center a copy of the workflow for paper-filed Form 990s and their Schedule Bs consistent with her explanation to the Supreme Court.¹²

37. However, the Attorney General did not provide any records to Empire Center indicating how Schedule Bs filed with the Attorney General's office are kept secure.

38. On March 9, 2023, Empire Center sent a letter to the Attorney General¹³ expressing its concern that a Schedule B may have leaked from her office and that her FOIL responses and non-responses indicated her office had no grasp on security for those records and no plans to destroy Schedule Bs her office obtained in violation of the First Amendment.

¹⁰ Exhibit A.

¹¹ New York State Office of the Attorney General. *Charities registration*. [ag.ny.gov](https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-registration). <https://ag.ny.gov/resources/organizations/charities-nonprofits-fundraisers/charities-registration>

¹² Exhibit B.

¹³ Exhibit C.

39. Empire Center demanded that the Attorney General respond with a certification that the Schedule Bs had been destroyed, or with a concrete plan for doing so.

40. The Attorney General sent Empire Center a letter¹⁴ promising to respond to Empire Center's demand by the second week of April, but she has not yet responded.

The Parties

41. Petitioner Empire Center is a domestic nonprofit corporation qualified under Section 501(c)(3) of the Internal Revenue Code based in Albany, New York.

42. Petitioner New Yorker's Family Research Foundation is a nonprofit charity under Section 501(c)(3) of the Internal Revenue Code based in Greece, New York that filed unredacted Schedule Bs containing donor names and addresses with the Attorney General from 2005 through 2021, and in several prior years.

43. Letitia James is the Attorney General of the state of New York whose office made the rule requiring registered charities to file their Schedule Bs with its Charities Bureau.

Jurisdiction and Venue

44. This Court has jurisdiction under CPLR 7804(b) and 506(b) because, upon information and belief, all actions taken by respondent as described here took place within Albany County and because respondent has its principal office within Albany County.

¹⁴ Exhibit D.

First Cause of Action: Declaratory Judgment**13 NYCRR 91.5(c)(3) Chills Free Speech**

45. Petitioners repeat and re-allege paragraphs 1 through 44 as if fully set forth in this paragraph.

46. The Supreme Court concluded in *AFP v. Bonta* that California had no investigative reason to require charitable organizations to disclose their Schedule Bs.

47. None of the information contained in a Schedule B was determined to be necessary to advance the California Attorney General's investigative, regulatory or enforcement efforts.

48. Here, no part of the Schedule B is necessary for the Attorney General to carry out her investigative, regulatory or enforcement efforts.

49. The Attorney General's regulation, however, adds an administrative burden to charities in New York submitting their annual filing.

50. That burden could lead to an organization submitting unredacted donor names through administrative error.

51. An organization could choose to file an unredacted Schedule B because it lacks the technology or other resources to make the redactions or create a new summary document for filing.

52. The Attorney General's regulation 91.5(c)(3) chills free speech and should be declared unconstitutional.

Second Cause of Action: Declaratory Judgment**Unlawful Retention of Schedule Bs**

53. Petitioners repeat and re-allege paragraphs 1 through 52 as if fully set forth in this paragraph.

54. From at least 2005 through 2021, Petitioner New Yorker's Family Research Foundation filed its unredacted Schedule Bs to comply with the Attorney General's regulations under the threat of substantial penalties.

55. There is no evidence the Attorney General has removed and destroyed electronic or paper copies of the Foundation's filed Schedule Bs since the Supreme Court's ruling in *AFP v. Bonta* on July 1, 2021.

56. Thus, under *AFP v. Bonta*, the Attorney General is committing an ongoing violation of the Foundation's donors' associational rights guaranteed under the First Amendment.

57. The Attorney General also is violating the Foundation's donors' free speech rights under Section 8 of Article I of the New York Constitution.

58. The Attorney General's retention of these Schedule Bs should be declared unlawful.

**Third Cause of Action: Article 78
Order to Destroy Schedule Bs**

59. Petitioners repeat and re-allege paragraphs 1 through 58 as if fully set forth in this paragraph.

60. From at least 2005 through 2021, Petitioner New Yorker's Family Research Foundation filed its unredacted Schedule Bs to comply with the Attorney General's regulations under the threat of substantial penalties.

61. There is no evidence the Attorney General has removed and destroyed electronic or paper copies of the Foundation's filed Schedule Bs since the Supreme Court's ruling on July 1, 2021.

62. Thus, under *AFP v. Bonta*, the Attorney General is committing an ongoing violation of the Foundation's donors' associational rights guaranteed under the First Amendment.

63. The Attorney General also is violating the Foundation's donors' free speech rights under Section 8 of Article I of the New York Constitution.

64. The Attorney General's should be ordered to destroy the Schedule Bs her office is retaining and certify their destruction to this Court.

Relief Requested

65. Petitioner requests that this Court issue an order:
- a. Declaring that 13 NYCRR 91.5(c)(3) violates the First Amendment of the United States Constitution and Section 8 of Article I of the New York Constitution;
 - b. Declaring that the Respondent may not lawfully retain IRS Form 990 Schedule Bs containing unredacted donor names and addresses filed with it prior to July 1, 2021;
 - c. Directing the Respondent to destroy all Schedule Bs filed with it prior to July 1, 2021;
 - d. Directing Respondent to certify to the Court within 30 days of the date of the order that Schedule Bs filed with it prior to July 1, 2021 have been destroyed;
 - e. Awarding attorneys' fees and costs reasonably incurred here as allowed under FOIL; and

f. Granting any other relief that this Court may deem just and proper.

Dated: Albany, New York
May 16, 2023

Respectfully submitted,



Cameron J. Macdonald
Government Justice Center
69 State Street, Suite 807
Albany, New York 12207
(518) 434-3125
cam@govjustice.org

Counsel for Petitioners

VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) :ss

I, Tim Hoefler, being duly sworn, depose and say:

I am the President and Chief Executive Officer of the Empire Center for Public Policy, Inc., Petitioner in this case. I have reviewed the foregoing Verified Petition and know its contents to be true to my knowledge, except as to the matters in it stated to be alleged upon information and belief, and that as to those matters, I believe them to be true.

[Handwritten signature of Tim Hoefler]
Tim Hoefler

Sworn to and subscribed before me
this 15th day of May, 2023

[Handwritten signature of Notary Public]
Notary Public

Clinton C. Smith
Notary Public, State of New York
Qualified in Albany County
No. 01SM0005922
Commission Expires April 20, 2024

VERIFICATION

STATE OF NEW YORK)
 :ss
COUNTY OF ALBANY)

Cameron J. Macdonald, being duly sworn, deposes and says:

I am the attorney for New Yorker’s Family Research Foundation, Petitioner in the above-captioned action. I have reviewed the Petition above and know its contents to be true to my knowledge, except as to the matters in there stated to be alleged on information and belief, and that as to those matters, I believe them to be true based on my review of pertinent documents and conversations with persons with personal knowledge.

This verification is made by me rather than Petitioner because the Petitioner resides outside Albany County where I maintain my office.



Cameron J. Macdonald

MENU

Exhibit A

ENDORSEMENTS

Letitia A. James for New York's attorney general

New York State Attorney General Letitia James. Credit: Newsday/Steve Pfost

October 22, 2022

Find out the candidates Newsday's editorial board selected on your ballot:

[newsday.com/endorsements22](https://www.newsday.com/endorsements22)

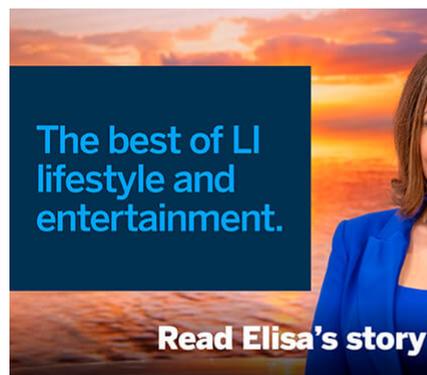
Letitia A. James is a talented politician. Her terrific interpersonal skills, keen eye for the camera and ear for messaging, and a preternatural instinct for navigating the state's cutthroat politics have served her well. Leveraging her base in Brooklyn and her background as a public defender, she won a seat on the New York City Council, and then, as the city's public advocate, springboarded herself to statewide office. In 2018, she became the first woman and Black attorney general.



Unfortunately, these instincts generally have not served her well in her first term. But overall, she has been capable and effective.

Only the naive would believe that politics can be scrubbed from one of the most powerful offices in the state. James' elected predecessors — Eric Schneiderman, Andrew Cuomo and Eliot Spitzer — were intensely ambitious. But at a time when trust in governmental institutions has collapsed and bad faith is assumed, the state's chief law enforcement officer, who can bring high-profile criminal prosecutions and punishing civil litigation, must be especially careful. James hasn't been.

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Newsday

Her lawsuit claiming millions of dollars in fraud by NRA leaders exposed self-dealing top executives, an important part of the AG's charity and nonprofit oversight. But her further effort to impose the state's "corporate death penalty" on the NRA was thrown out in court as too extreme, with a risk of infringing on the free speech rights of organization members. The office has not appealed.

James has not provided satisfactory answers as to how a confidential list of donors to a nonprofit headed by possible GOP 2024 presidential candidate Nikki Haley was leaked recently. James told the editorial board that an internal investigation determined that a switching of software systems caused the security break. While James said the confidential records of many nonprofits were exposed, she could not explain why those of Haley's organization seemed to be the only ones disclosed.

proceedings, raised her profile nationally. But a careful reading of the report spurs concerns about overreach. At a news conference, James claimed Cuomo “sexually harassed multiple women, and in doing so violated federal and state law.” But James made no referrals to federal or state prosecutors regarding the complaints of the 11 women listed in the report. No criminal charges have been filed against Cuomo; two lawsuits are pending.

Cuomo filed an ethics complaint against James and seeks the release of evidence he says is exculpatory. The outcome of that complaint and the pending civil cases could provide more clarity. But James’ fumbled gubernatorial run, launched shortly after Cuomo resigned, undermined her credibility. Her other well-publicized effort is a lawsuit against the Trump Organization which demands punishing sanctions against former President Donald Trump and his family. While the AG’s complaint is strong, her public sparring with Trump is unnecessary.

Ambition aside, under James’ tenure, the AG’s office has done important work, leading multistate litigation to punish opioid manufacturers and distributors, and ensuring that settlement funds are used for treatment programs. She kept the office focused on penalizing construction firms that dumped debris in Suffolk County, an acute problem that needs continued enforcement. And she has rightly required Long Island real estate firms to take actions designed to stop racial steering in housing sales. James said that in a second term she would focus on whether some local zoning laws that stop new housing construction are exclusionary.

James, 64, has a multipronged program to improve public safety, including increasing psychiatric beds to treat those with mental illness, expanding pretrial services for those awaiting disposition of their cases, and amending the Raise the Age law to allow bail for crimes committed with a gun. But she is late in the game in espousing it. She needs to take the lead on this issue and use her statutory authority to present the legislature with a “program bill” that could spur changes.

Republican Michael Henry, 42, is a commercial litigator with almost no political footprint. He says James is “weaponizing” the attorney general’s office, citing the handling of the Cuomo probe. He said it would be a “tough decision” on whether to withdraw or continue the AG’s lawsuit against the Trump Organization.



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Newsday

Henry said he would evaluate whether to continue to defend some provisions of the state's new gun permitting law, which has had some of its key elements struck down by two federal courts, rulings he says are unwinnable on appeal. Continuing the lawsuit, he said, would be a waste of resources.

Acknowledging that New Yorkers are overwhelmingly pro-choice on abortion, Henry said he would defend the state's expansive laws, regardless of his personal views which differ.

Henry praised James for enforcing fair housing laws but said he would see whether abysmal conditions in complexes operated by the New York City Housing Authority constitute discrimination. Additionally, he seeks to streamline the office's regulatory oversight of insurance and financial services. But Henry had little command of the AG's role in enforcing environmental laws.

Henry's ideas on invigorating the office are appealing. But he has little of the experience needed to competently manage this enormous public law firm nor the needed clout to get his changes accomplished.

Our concerns about James are considerable, but on balance surmountable. Newsday endorses James.

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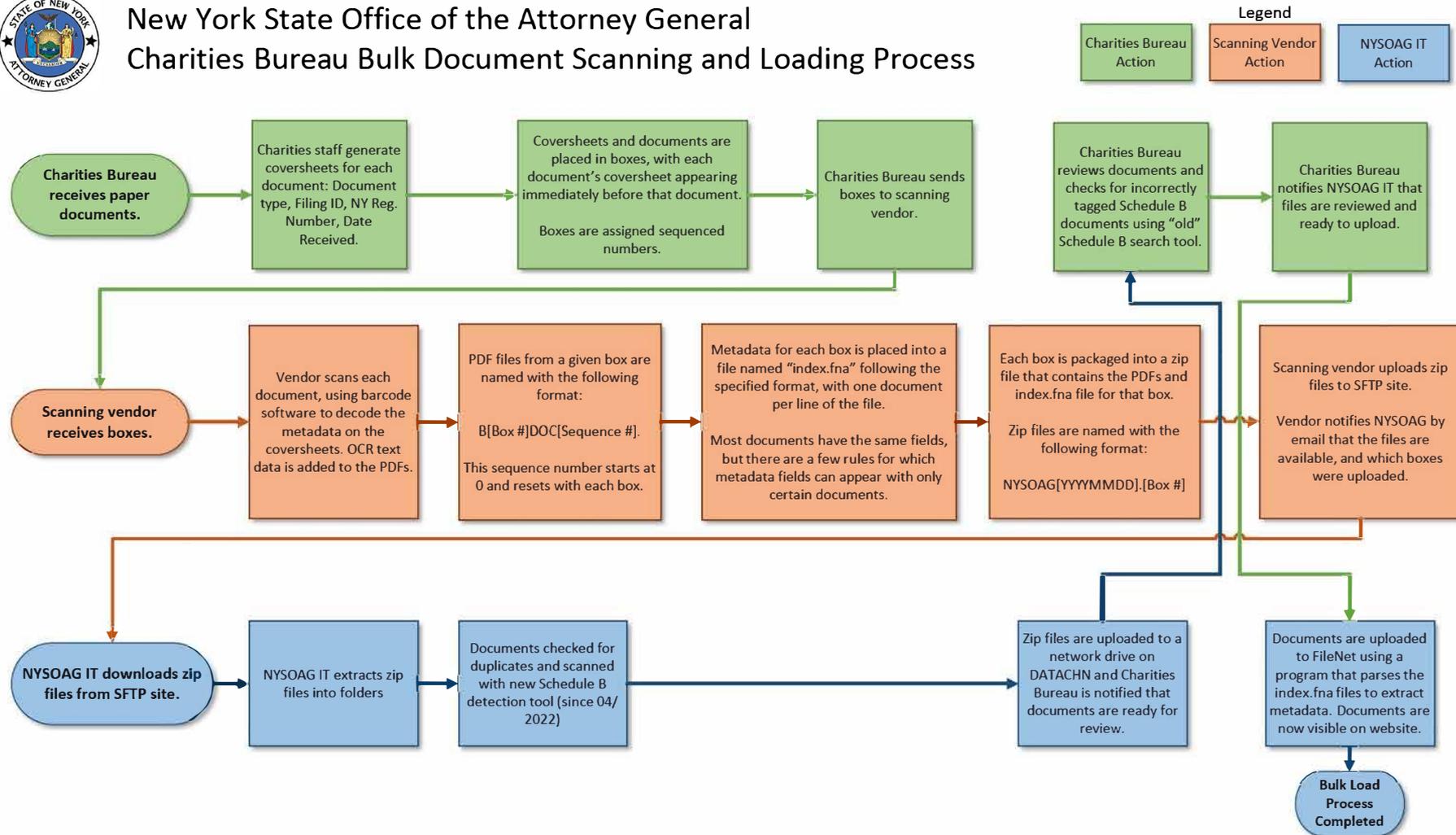
ENDORSEMENTS ARE DETERMINED solely by the Newsday editorial board, a team of opinion journalists focused on issues of public policy and governance. Newsday's news division has no role in this process.

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Exhibit B



New York State Office of the Attorney General
Charities Bureau Bulk Document Scanning and Loading Process



Schedule B Refresher

Charities Bureau Registration Section

9-15-22

What is Schedule B?

IRS 990 Schedule B Schedule of Contributors

Schedule B is a shielded, private document listing contributor information for tax exempt charities. It is not open to public disclosure.

IRS 990 Schedule B Review

- Coversheeting Schedule B
 - How to identify, separate and barcode
- Evaluation and Schedule B
 - How to extract and make private

Where to look for Schedule B? Anywhere.

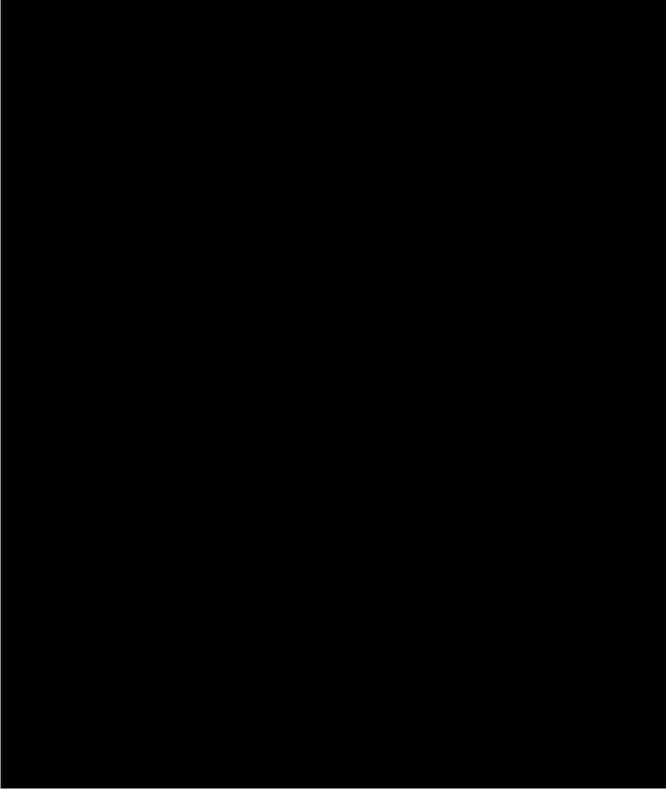
- Schedule B can be already separated
- Schedule B can precede the IRS 990 Form
- Schedule B can follow Schedule A in the IRS 990 Form
- Schedule B can be at the end of the IRS 990 Form
- Schedule B can be in the middle of the IRS 990 Form
- Schedule B can be mixed in with the audit or financial review

Private Schedule A

- There is a Schedule A variation. It is occasionally included in filings, and functionally treated as a Schedule B. The telltale sign is the header at right that says “Do Not File” and “Not Open to Public Inspection”
- For this training, consider any process/direction on Schedule B to apply to this type of Schedule A as well

Schedule A	Payments from Disqualified Persons Included on Part III, Line 7a	2014
	** Do Not File **	
	*** Not Open to Public Inspection ***	

FOIL G000489-090922 000024



Other private documents

- If you spot any documents containing private information during your review at any stage (Cover sheet or Evaluation) remove the page(s) and place them under Miscellaneous. (Ex: Social Security number, credit card number, third party letter/TOC, IP address, etc.)
- If you are unsure if a document has private information, please check with your supervisor.

No exceptions to separating Schedule B

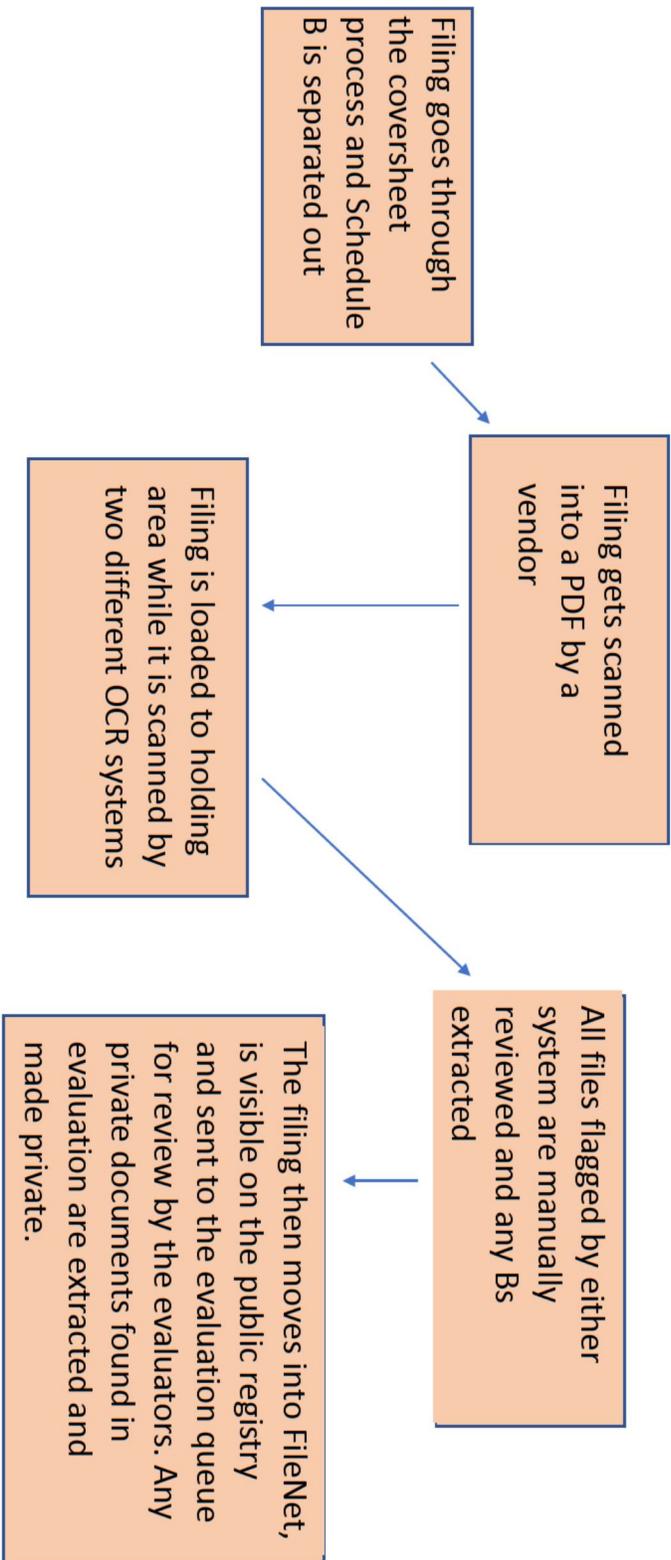
- A Schedule B must always be extracted, no matter what is on the document:
- Schedule B is blank = Separate
- Schedule B is double sided with a public document = Separate
- Schedule B says it is open for public inspection = Separate
- Schedule B is partially redacted=Separate
- Schedule B is fully censored = Separate
- Multiple copies of Schedule B are included = Separate and barcode all

What if a Schedule B is double-sided with a public document?

- The Schedule B must be extracted; the public document remains public. Here are the steps:
 - Go to the nearest copier, insert the document and then select “Copy”
 - Select “two-sided to one-sided”
 - Now that you have two separate pages, put the public page where it belongs with the 990 and the Schedule B page under the Schedule B barcode.

Note: If the preparer has included a stand-alone Schedule B Page 1, also include it behind the Schedule B barcode.

Schedule B paper process timeline



CHAR500 portal

- Public charities are given the option to either attach a redacted Schedule B (with only the amounts donated and their states of origin) or include the amount raised in New York in the reporting period, which can be indicated by selecting the correct contribution range.
- Private foundations are required to continue submitting a complete Schedule B with the Charities Bureau as they do to the IRS.

Public Charity

Please answer the questions below to confirm your public charity's category.

Did the organization solicit or receive contributions during the fiscal year in New York State? *

Yes No

Has the organization submitted a Schedule B to the IRS in this reporting period? *

Yes No

Organizations have two options, to submit a redacted Schedule B, or to enter the total New York State Contributions in the fiscal year *

I would like to enter the total New York State Contributions I would like to submit a redacted Schedule B

Back	Save and Exit	Save and Continue
------	---------------	-------------------

CHAR500 portal

- OCR scans all uploaded files. If a Schedule B is detected in a public upload slot, it is flagged with the red "Yes"
- As a safeguard, filings cannot be approved while any file is still flagged. An evaluator will look through the document and extract the Schedule B, or if it was a false positive, click on "Remove" to unflag.

Sing Sing Prison Museum, Inc. - 46-76-02 - new - DUAL - Cr

CHAR500 Documents				
File Type	File Name / User ID / Modified Date	Needs Attention	Action	UnFlag
CHAR500	CHAR500_12-31-2021_F20220907000050...			
IRS Document	990.pdf info@singsingprisonmuseum.org 09/07/2022	Yes		Remove
Redact Schedule B	Schedule B.pdf info@singsingprisonmuseum.org 09/07/2022			
Review	Final Financial Statements.pdf info@singsingprisonmuseum.org 09/07/2022			

Upload Documents

FOIL G000489-090922 000030

Charities Bureau
Registration Section

Sincerely,

Charities.AnnualFiling@ag.ny.gov

If you have any questions concerning your annual filing please contact the Charities Bureau by phone at (212) 416-8401 or email to

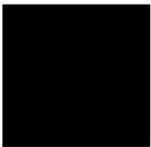
re-signed and re-submitted within 15 days.

aware that the filing will be designated incomplete in the Charities Bureau registry unless all deficiencies are corrected and the filing is
sure to re-send your annual filing to the organization's signatories for signature after correcting all the above deficiencies. Please be
In order to address the deficiencies identified above, please login to the [Charities Portal](#) and make the required changes. Please make

deducted Schedule B. Please submit a complete redacted Schedule B that includes all donation amounts and their state of origin.
1. The New York State Charities Bureau requires that organizations include a donation's state of origin when submitting a

Thank you for submitting your organization's annual filing to the New York State Attorney General's Charities Bureau. However, the
filing was incomplete for the following reason(s):

Dear Sir or Madam:



Re:
NY Registration Number:
Filing Year:

NOTICE OF INCOMPLETE ANNUAL FILING



Leticia James
Attorney General

Division of Social Justice
Charities Bureau
09/12/2022

State of New York
Office of the Attorney General

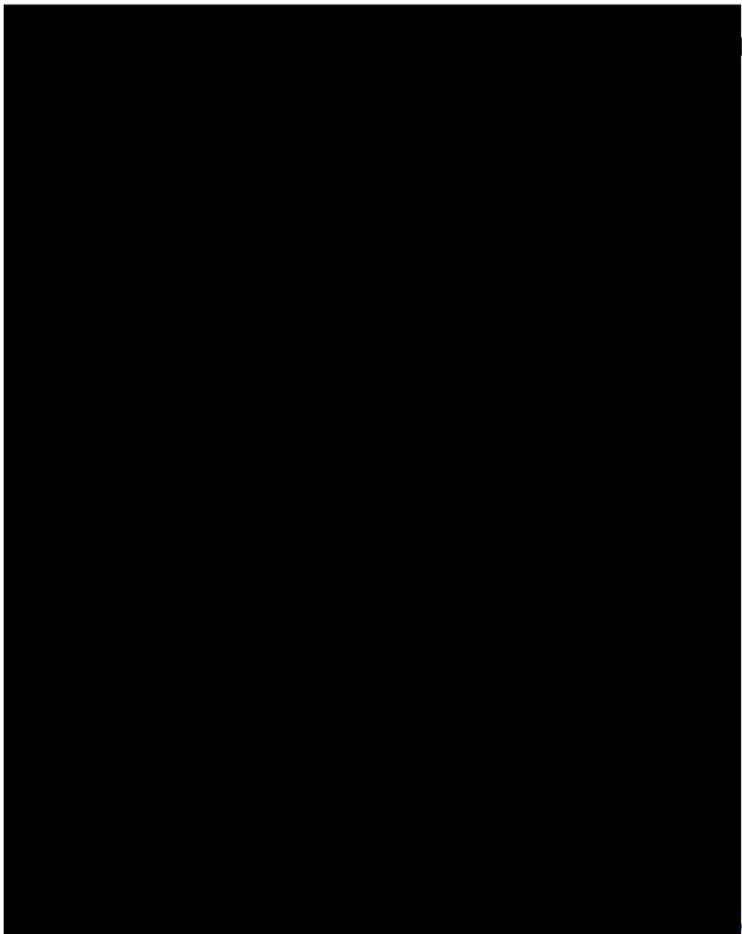
- When evaluators review an online submission, they page through every document even if it does not have an OCR flag
- Manual review is the critical safeguard against any Schedule B moving into FileNet improperly tagged
- OCR does not replace manual review
- If a Schedule B is located during the review, evaluators then extract it, upload it as a private one and upload the document without the Schedule B

CHAR500 portal

CHAR500 portal: Extract under all scenarios

- If an online filing is incomplete, Schedule B must be extracted before sending the incomplete notice.
 - In certain use cases, if a filing containing a mislabeled Schedule B is returned to a user, it may automatically move to FileNet after 20 days if the user has not addressed the deficiencies
 - Coding issue has been flagged to IT and will be addressed in a future upgrade

FOIL G000489-090922 000032



CHAR500 portal: Extract under all scenarios

- As with the paper process, if you spot any documents containing private information during your review, extract them and place under the private "Other" category.
- If you are unsure if a document has private information, please check with your supervisor.

Any Questions?





Exhibit C

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 \(2021\)](#).

Letitia James
March 9, 2023
Page 2

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.

Letitia James
March 9, 2023
Page 3

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



STATE OF NEW YORK
OFFICE OF THE ATTORNEY GENERAL
28 LIBERTY STREET, 19TH FLOOR
NEW YORK, NEW YORK 10005

Exhibit D

LETITIA JAMES
ATTORNEY GENERAL

DIVISION OF SOCIAL JUSTICE
CHARITIES BUREAU
JAMES G. SHEEHAN, BUREAU CHIEF
(212) 416-8490
James.Sheehan@ag.ny.gov

March 21, 2023

Cameron Macdonald, Esq.
Government Justice Center, Inc.
69 State Street, Suite 807
Albany, New York 12207

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

Dear Mr. Macdonald,

I write in response to your letter dated March 9, 2023 addressed to Letitia A. James, redirected to my attention on or about March 16, 2023.

The matter is being reviewed. I anticipate a response to your request in the second week of April.

Sincerely,

A handwritten signature in black ink, appearing to read "James G. Sheehan". The signature is fluid and cursive, with a large initial "J" and "S".

James G. Sheehan