

# 20-2766-cv

---

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

---

**Donald J. Trump,**

*Plaintiff-Appellant,*

v.

**Cyrus R. Vance, Jr.,** in his official capacity as District Attorney of the County of  
New York, and **Mazars USA, LLP,**

*Defendants-Appellees.*

---

*On Appeal from the United States District Court for the  
Southern District of New York, No. 19-cv-8694 (Marrero, J.)*

---

**BRIEF OF AMICUS CURIAE PUBLIC INTEREST LEGAL FOUNDATION  
IN SUPPORT OF PLAINTIFF-APPELLANT**

---

Kaylan L. Phillips  
PUBLIC INTEREST LEGAL FOUNDATION  
32 East Washington Street, Suite 1675  
Indianapolis, IN 46204  
Tel: 317-203-5599  
kphillips@publicinterestlegal.org

*Counsel for Amicus Curiae Public Interest Legal Foundation*

## **CORPORATE DISCLOSURE STATEMENT**

The Public Interest Legal Foundation is a non-profit 501(c)(3) organization. It is not a publicly held corporation and no corporation or other publicly held entity owns more than 10% of its stock.

**TABLE OF CONTENTS**

CORPORATE DISCLOSURE STATEMENT ..... ii

TABLE OF AUTHORITIES .....iv

INTEREST OF AMICUS CURIAE.....1

SUMMARY OF THE ARGUMENT .....3

ARGUMENT .....4

    I.    The IRC Prohibits Mazars’ Disclosure of and the Manhattan DA’s  
        Inspection of Donald Trump’s and the Trump Organization’s Tax  
        Returns and Return Information.....4

        A. The IRC Prohibits the Disclosure of the Trump Entities’ Returns and  
           Return Information by Mazars to the Manhattan DA .....4

        B. The IRC Prohibits the Manhattan DA From Accessing the Trump  
           Entities’ Returns or Return Information from Mazars .....5

    II.   The Manhattan DA Has Ignored the IRC’s Strict Delineation of  
        Permissible Ways to Access the Trump Entities’ Tax Returns and Return  
        Information .....5

    III.  Compelled Disclosure Is Antithetical to the Foundational Principles of  
        the United States .....7

CONCLUSION ..... 10

CERTIFICATE OF COMPLIANCE ..... 11

CERTIFICATE OF SERVICE..... 12

**TABLE OF AUTHORITIES**

**Cases**

*Citizens United v. FEC*, 558 U.S. 310 (2010)..... 9

*Commonwealth v. Burgess*, 5 Mass. L. Rep. 81 (Mass. Superior Ct. 1996) ..... 6

*Elec. Privacy Info. Ctr. v. IRS*, 910 F.3d 1232 (2018) .....9

*NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449 (1958)..... 8-9

*National Org. for Marriage, Inc. v. United States*,  
24 F. Supp. 3d 518 (E.D. Va. 2014) .....2

*United States v. NorCal Tea Party Patriots (In re United States)*,  
817 F.3d 953 (6th Cir. 2016) ..... 6

**Statutes**

26 U.S.C. § 6103(a) ..... 3-4

26 U.S.C. § 6103(a)(3)..... 4

26 U.S.C. § 6103(c) ..... 6

26 U.S.C. § 6103(d) ..... 6

26 U.S.C. § 6103(d)(1) ..... 5

26 U.S.C. § 6103(p)(8)(A) ..... 7

26 U.S.C. § 7431(a)(2)..... 5

26 U.S.C. § 7213A(a)(2)..... 5

26 U.S.C. § 7231A(b)(1)..... 5

26 U.S.C. § 7431(a)(2)..... 4

**Other Authorities**

New York Senate Bill S2271 .....7

Appendix J, Petition for Writ of Certiorari, *Trump v. Vance*, No. 19-635 .....4 n.2

The Federalist No. 1.....8

Thomas Paine, Common Sense .....8

Trish Loughran, The Republic in Print: Print Culture in the Age of U.S. Nation  
Building (2007).....8

## INTEREST OF AMICUS CURIAE<sup>1</sup>

The Public Interest Legal Foundation, Inc. (the “Foundation”) is a non-partisan, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation’s mission is to promote the integrity of elections nationwide through research, education, remedial programs, and litigation. The Foundation also seeks to ensure that voter qualification laws and election administration procedures are followed. Specifically, the Foundation seeks to ensure that the nation’s voter rolls are accurate and current, working with election administrators nationwide and educating the public about the same. The Foundation also believes that compelled disclosure risks chilling and restraining Constitutionally protected freedoms and the Foundation is therefore an advocate for privacy in one’s affairs, associations, and donors. For example, the Foundation has terminated fundraising in California due to California’s insistence on forcing the production of unredacted donor information as the Foundation has serious concerns about how the state will use and safeguard its donors’ information from abusive behavior. The Foundation also served as counsel in an action for damages against the Internal Revenue Service for the IRS’s unauthorized disclosure of the

---

<sup>1</sup> No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici curiae* and its counsel, make a monetary contribution intended to fund the preparation or submission of this brief. All parties were timely notified and have consented to the filing of this brief.

confidential portion of a tax return containing a list of major donors. *National Org. for Marriage, Inc. v. United States*, 24 F. Supp. 3d 518 (E.D. Va. 2014). The Foundation has a substantial interest in the enforcement of the confidentiality provisions of the Internal Revenue Code implicated in this matter.

## **SUMMARY OF THE ARGUMENT**

This case is about the New York County District Attorney’s (“Manhattan DA”) subpoena to a private corporation seeking access to an individual’s personal and corporate federal tax returns and related return information (“Trump returns or return information”). Of course, the Manhattan DA *may lawfully* access such returns or return information by complying with the Internal Revenue Code (“IRC”). Instead, the Manhattan DA seeks to violate the IRC, which sets forth confidentiality protections concerning any individual’s—President Donald Trump and the Trump Organization (“Trump entities”) included—federal tax returns and return information. 26 U.S.C. § 6103(a). The Manhattan DA is permitted under the IRC to direct his request for the Trump entities’ records from the New York State Department of Taxation and Finance, which is itself authorized to request those records from the United States Secretary of Treasury. This is not how the Manhattan DA has proceeded. Because the Manhattan DA disregarded federal rules governing access to the Trump entities’ federal tax returns and related return information, this Court should reverse the District Court’s order.



## ARGUMENT

### **I. The IRC Prohibits Mazars' Disclosure of and the Manhattan DA's Inspection of Donald Trump's and the Trump Organization's Tax Returns and Return Information.**

#### **A. The IRC Prohibits the Disclosure of the Trump Entities' Returns and Return Information by Mazars to the Manhattan DA.**

The Mazars' subpoena demands, *inter alia*, copies of “[t]ax returns and related schedules, in draft, as filed [sic], and amended form,” along with “[a]ll underlying, supporting, or source documents and records used in the preparation, compilation, review, or auditing of [those] documents.”<sup>2</sup> The IRC at 26 U.S.C. § 6103(a) states,

Returns and return information shall be confidential, and [] . . .

(3) no other person (or officer or employee thereof) who has or had access to returns or return information . . .

shall disclose any return or return information obtained by him in any manner in connection with his service as such an officer or an employee or otherwise or under the provisions of this section. For purposes of this subsection, the term ‘officer or employee’ includes a former officer or employee.

26 U.S.C. §§ 6103(a), 6103(a)(3). If Mazars violates this provision, the taxpayer, whether President Trump or Trump Organization and its affiliates (“Trump entities”), may bring a civil damages action against Mazars. The IRC at 26 U.S.C. § 7431(a)(2) states,

---

<sup>2</sup> Appendix J, Petition for Writ of Certiorari, *Trump v. Vance*, No. 19-635.

[i]f any person who is not an officer or employee of the United States knowingly, or by reason of negligence, inspects or discloses any return or return information with respect to a taxpayer in violation of any provision of section 6103 . . . such taxpayer may bring a civil action for damages against such person in a district court of the United States.

26 U.S.C. § 7431(a)(2).

**B. The IRC Prohibits the Manhattan DA From Accessing the Trump Entities' Returns or Return Information from Mazars.**

The IRC at 26 U.S.C. § 7213A(a)(2), prohibits a state and other employees from “willfully [] inspect[ing] . . . any return or return information acquired by such person[.]” This same statutory section of the IRC makes unauthorized access to returns and return information a crime. *Id.* at § (b)(1)(“[a]ny violation of subsection (a) shall be punishable upon conviction by a fine in any amount not exceeding \$1,000, or imprisonment of not more than 1 year, or both, together with the costs of prosecution.”).

**II. The Manhattan DA Has Ignored the IRC's Strict Delineation of Permissible Ways to Access the Trump Entities' Tax Returns and Return Information.**

The IRC permits local law enforcement officials to access federal returns and return information only through requests to the relevant state agency charged with tax administration. 26 U.S.C. § 6103(d)(1). And those state tax agencies must request the information directly from the IRS. *Id.* The relevant section of the IRC states,

Returns and return information . . . shall be open to inspection by, or disclosure to, any State agency, body, or commission, or its legal representative, which is charged under the laws of such State with responsibility for the administration of State tax laws for the purpose of, and only to the extent necessary in, the administration of such laws . . . Such inspection shall be permitted, or such disclosure made, only upon written request by the head of such agency, body, or commission, and only to the representatives of such agency, body, or commission designated in such written request as the individuals who are to inspect or to receive the returns or return information on behalf of such agency, body, or commission.

*Id.* The Manhattan DA may access the Trump entities' returns or return information either by their consent, 26 U.S.C. § 6103(c), or through a request to the New York State Department of Taxation and Finance consistent with that entity's lawful access under 26 U.S.C. § 6103(d). *Accord United States v. NorCal Tea Party Patriots (In re United States)*, 817 F.3d 953, 961 (6th Cir. 2016); *Commonwealth v. Burgess*, 5 Mass. L. Rep. 81 (Mass. Superior Ct. 1996).

In the state of New York, the relevant state agency charged with the administration of the tax laws of New York is the New York State Department of Taxation and Finance. The IRC consistently prohibits access to federal tax returns and return information without oversight by the Department of Treasury or confidentiality protections established by state law. For instance, for those states which require copies of federal returns or return information in state tax return submissions, the IRC states,

no return or return information shall be disclosed . . . to any officer or employee of any State which requires a taxpayer to attach to, or include

in, any State tax return a copy of any portion of his Federal return, or information reflected on such Federal return, unless such State adopts provisions of law which protect the confidentiality of the copy of the Federal return (or portion thereof) attached to, or the Federal return information reflected on, such State tax return.

26 U.S.C. § 6103(p)(8)(A). Even New York Senate Bill S2271, which would authorize the disclosure of President Trump's New York State tax returns and return information to the United States Congress, contains specific confidentiality protections which would prevent disclosure of federal tax returns or return information. *See e.g.*, <https://www.nysenate.gov/legislation/bills/2019/s2271>.

### **III. Compelled Disclosure Is Antithetical to the Foundational Principles of the United States.**

The IRC is consistent with this Nation's long history of protecting privacy in one's affairs and associations. Indeed, anonymous speech was essential to the founding of the United States. Prominent founders communicated their positions to colonists through written works under pseudonyms such as Publius, Cato, and Federal Farmer. "Publius" is the name chosen by those who wrote the Federalist Papers, a series of essays aimed to garner support for the ratification of the United States Constitution. The first such paper, now known to be authored by Alexander Hamilton, speaks to the author's intent of presenting facts that are not clouded by bias regarding any one author himself.

In the course of the preceding observations, I have had an eye, my fellow-citizens, to putting you upon your guard against all attempts, from whatever quarter, to influence your decision in a matter of the

utmost moment to your welfare, by any impressions other than those which may result from the evidence of truth.

...

My motives must remain in the depository of my own breast. My arguments will be open to all, and may be judged of by all. They shall at least be offered in a spirit which will not disgrace the cause of truth.

The Federalist No. 1.

Thomas Paine's "Common Sense" was originally published anonymously.

As Paine explained in his work, "Who the Author of this Production is, is wholly unnecessary to the Public, as the Object for Attention is the *Doctrine itself*, not the *Man*." Thomas Paine, *Common Sense*, Introduction (emphasis in original).

In addition to avoiding clouded judgments, the founders understood the risk that came from speaking out on issues of controversy. In response to calls for disclosure of the identities of the authors of Anti-federalist writings, one individual wrote that requiring an author to sign his name "is as much as to say, Give me a stick, and I will break your head." Trish Loughran, *The Republic in Print: Print Culture in the Age of U.S. Nation Building* at page 134 (2007).

In 1958, the Supreme Court was confronted with the issue of the State of Alabama seeking forced disclosure of the names and addresses of members of the NAACP. *NAACP v. Ala. ex rel. Patterson*, 357 U.S. 449, 449 (1958). The Supreme Court recognized that "[e]ffective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group

association.” *Id.* at 460. Abridgement of the freedom of association “even though unintended, may inevitably follow from varied forms of governmental action.” *Id.* at 461. The Court found that Alabama’s forced disclosure of the NAACP’s member lists “is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs” because “it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.” *Id.* at 462-63.

Recent history demonstrates that compelled disclosure is a tool that is used to engage in vitriolic and even dangerous personal attacks. As Justice Thomas recognized, “The success of such intimidation tactics has apparently spawned a cottage industry that uses forcibly disclosed donor information to *pre-empt* citizens’ exercise of their First Amendment rights.” *Citizens United v. FEC*, 558 U.S. 310, 482 (2010) (Thomas, J., dissenting in part) (emphasis in original).

With limited exception, “[n]o one can demand to inspect another’s tax records. And the IRC’s confidentiality protections extend to the ordinary taxpayer and the President alike.” *Elec. Privacy Info. Ctr. v. IRS*, 910 F.3d 1232, 1235 (2018).

**CONCLUSION**

For the foregoing reasons, this Court should reverse the District Court.

Dated September 18, 2020

Respectfully submitted,

/s/ Kaylan L. Phillips

Kaylan L. Phillips

PUBLIC INTEREST LEGAL FOUNDATION

32 East Washington Street, Suite 1675

Indianapolis, IN 46204

Tel: 317-203-5599

kphillips@publicinterestlegal.org

*Counsel for Amicus Curiae Public Interest Legal Foundation*

**CERTIFICATE OF COMPLIANCE**

This brief complies with the type-volume limits of Rule 29(a)(5) because, excluding the parts of the brief exempted by Rule 32(f), this brief contains 1970 words.

This brief also complies with the typeface requirements because this brief has been prepared in a proportionally space type face using Microsoft Word in 14 point Times New Roman.

Dated: September 18, 2020.

/s/ Kaylan L. Phillips  
Kaylan L. Phillips  
Counsel for Amicus Curiae



**CERTIFICATE OF SERVICE**

I hereby certify that on September 18, 2020, I electronically filed the foregoing *Amicus Curiae* Brief using the Court's ECF system, which will serve notice on all parties.

Dated: September 18, 2020.

/s/ Kaylan L. Phillips  
Kaylan L. Phillips  
Counsel for Amicus Curiae