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Misusing Disclosure: *How a Policy Intended to Increase Voter Knowledge Often Misleads the Public*

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Executive Summary

- Compulsory disclosure laws force citizens who contribute to candidates or primarily political organizations to have their name, address, and employer made publicly available in a government database.
- Disclosure laws are intended to inform the public about the sources of support for candidates, parties, and PACs, but studies show they fail to achieve this goal.
- Voters generally do not seek out or use disclosure information, granting political operatives and the media tremendous power to filter how disclosure information is reported to the public.
- Political activists often use disclosure data in five primary ways to self-serving ends, rather than to impartially educate voters.
- Reports on disclosure data often inflate campaign spending figures by including any spending on speech about policy issues as speech about a candidate. This “junk disclosure” creates more exciting headlines and stories, but fails to accurately inform the public.
- Disclosure-based reporting often attributes contributions from individuals to their employers, leaving the impression that corporations have made illegal corporate contributions and tarring candidates by associating them with “big business.”
- Because of stringent reporting requirements, disclosure data is so voluminous that activists can easily create the appearance of conspiracies, or disreputable associations, to attack political opponents without proper context.
- Public officials and political activists have used disclosure information to harass and intimidate donors in an attempt to bully certain speakers out of the public sphere.
- Political activists use disclosure data to organize boycott campaigns that further their own agendas.
- As a result of these problems, the actual function of many disclosure laws today is not to allow citizens to monitor their government, but to allow government, political operatives, employers, and even nosy neighbors to monitor citizens’ political associations and beliefs.
- When reforming disclosure laws, policymakers must consider the real world function of these mandates, not the hypothetical and lofty rhetoric employed by proponents of greater regulation of political speech.

Introduction

Campaign finance disclosure laws generally require candidates, political parties, and citizen groups that primarily work to elect or defeat candidates, to register with the government and file detailed, periodic reports listing information about their donors, contributions, and expenditures. Additionally, groups that run independent expenditures for or against candidates must report these expenditures and often must report the source of their donations if earmarked or directed to support a particular independent expenditure. These reports are then published in government databases and usually made accessible online.

The typical justification for mandatory donor disclosure is twofold: to improve government transparency and aid enforcement of other campaign finance laws. A 2010 joint report by the Campaign Finance Institute, American Enterprise Institute, and The Brookings Institution succinctly explains, “[i]mproved transparency will help citizens become more informed about candidates and the activity that takes place in election campaigns. It will also strengthen enforcement of the law by making it easier to track the contributions and expenditures made in election contests.”¹

In practice, however, compulsory disclosure laws lead to outcomes very different from these claimed intentions. A 2013 study found that disclosure causes small donors to both be less willing to donate and to donate in smaller amounts to avoid having their personal information forcibly disclosed to the public.² Additionally, the study found that these effects are strongest among citizens with personal networks that expose them to different views and weakest among citizens surrounded by people with like-minded views, suggesting that disclosure requirements bolster the voice of some while silencing the voices of others.³

Recent studies have also shown that after accounting for information that is voluntarily disclosed by a campaign, mandated disclosure provides little additional useful information to voters.⁴ In controlled experiments, access to disclosure information about the sources of support for a ballot initiative had “virtually no marginal benefit” on voter knowledge, and voters showed less interest in disclosure information than in other forms of information such as news reports, editorials, and campaign ads.⁵

1 Anthony J. Corrado, Michael J. Malbin, Thomas E. Mann, and Norman J. Ornstein, “Reform in an Age of Networked Campaigns,” Campaign Finance Institute, American Enterprise Institute, and The Brookings Institution. Retrieved on July 21, 2014. Available at: http://www.cfinst.org/books_reports/Reform-in-an-Age-of-Networked-Campaigns.pdf (January 2010), p. 32.

2 Raymond J. La Raja, “Political Participation and Civic Courage: The Negative Effect of Transparency on Making Small Campaign Contributions,” *Political Behavior*. Retrieved on July 21, 2014. Available at: http://polsci.umass.edu/uploads/profiles/sites/la-raja_ray/Disclosure_and_Small_Donors_POBE-2013.pdf (October 29, 2013).

3 *Ibid.*

4 David M. Primo, “Information at the Margin: Campaign Finance Disclosure Laws, Ballot Issues, and Voter Knowledge,” *Election Law Journal*, Vol. 12:2. Retrieved on July 21, 2014. Available at: <http://www.campaignfreedom.org/wp-content/uploads/2013/07/Information-at-the-Margin-Campaign-Finance-Disclosure-Laws-Ballot-Issues-and-Voter-Knowledge.pdf> (2013).

5 David M. Primo, Ph. D., “Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters and Stifle Public Debate,” Institute for Justice. Retrieved on July 21, 2014. Available at: http://www.ij.org/images/pdf_folder/other_pubs/fulldisclosure.pdf (October 2011), p. 18.



Other studies have confirmed that voters rarely seek disclosure information when deciding how to vote.⁶ Even among supporters of disclosure requirements, disclosure information is generally not sought out or utilized by the public.⁷ Disclosure provisions often help those who need it least, by producing complicated data that is mostly used by investigative journalists, political activists, and well-educated, wealthy individuals.⁸ Looking at the body of evidence, law professors Omri Ben-Shahar and Carl Schneider conclude, “[a]lthough mandated disclosure addresses a real problem and rests on a plausible assumption, it chronically fails to accomplish its purpose.”⁹

While disclosure laws fail at informing the public about candidates, they succeed at arming activists with information to launch attacks on their political opponents. This report documents the five most common ways disclosure information has been misused by political activists, usually to self-serving ends. It is based on the Center’s years of research observing and studying disclosure laws and their real-world impacts. The report is purely anecdotal, but its findings are consistent with much of the scholarly research showing that disclosure has greater costs and fewer benefits than commonly advertised. While many of the cases discussed could be placed in multiple categories, they are classified in the category they best exemplify.

6 Jason M. Farrell and Nima Veisheh, “Public Perception and the ‘Appearance of Corruption’ in Campaign Finance,” Center for Competitive Politics’ Issue Review. Retrieved on July 21, 2014. Available at: <http://www.campaignfreedom.org/wp-content/uploads/2012/11/Public-Perception-and-the-Appearance-of-Corruption-in-Campaign-Finance-Report-Final.pdf> (December 16, 2011).

7 *Ibid.*

8 *Ibid.*

9 Omri Ben-Shahar and Carl E. Schneider, “The Failure of Mandated Disclosure,” *University of Pennsylvania Law Review*, Vol. 159:647. Retrieved on July 21, 2014. Available at: <http://www.campaignfreedom.org/wp-content/uploads/2012/11/Ben-Shahar-2011-Failure.pdf> (2011), p. 5.

Five Common Ways Disclosure is Misused

Although these categories naturally overlap to varying degrees, there are five primary ways that disclosure information has been hijacked by anti-speech activists to advance a pro-regulatory agenda. Those who advocate for greater regulation of political speech routinely use disclosure information to trump up political spending figures by improperly blurring the lines between distinct types of speech – namely speech on political issues (issue advocacy) and speech advocating for or against a candidate (express advocacy) – which results in “junk disclosure.” The regulatory community routinely misuses disclosure information in their reporting by attributing contributions from individuals to the companies or industries they work for, in order to artificially inflate the role of business in politics. Activists often employ guilt by association techniques when discussing political spending by taking contributions out of context and promoting unfounded conspiracy theories. Compulsory disclosure information is used by public officials and political activists to harass and intimidate donors in an attempt to bully certain speakers out of the public sphere. Finally, activists use disclosure data to organize selective boycott campaigns that further their own partisan agendas.

The following sections explain the five primary ways that anti-speech activists routinely misuse compulsory disclosure information to advance their speech regulatory agenda.

Blurring the Lines between Distinct Types of Speech

Reports based on disclosure data aim to inform the public about important connections between candidates and their supporters, but often fall far short of that goal. Groups that promote even more compulsory disclosure often sensationalize reports. A lack of knowledge about the complexities of campaign finance law by the media and public can create an environment where the reports are uncritically repeated.

For example, in the 2014 election cycle, the Wesleyan Media Project attracted notoriety for tracking and reporting spending on television advertisements. Its press release “Interest Group Advertising Pours Into Senate Races”¹⁰ attracted coverage from major media outlets and pro-regulatory politicians. *USA Today* summarized by saying, “[c]ompetitive primaries, the fight for control of the Senate, and well-funded independent groups are putting midterm political advertising well ahead of the pace from 2012...”¹¹ *The Boston Globe* reported, “The Wesleyan Media Project and the Center for Responsive Politics found that a majority of television advertisements in current US Senate campaigns are sponsored by outside interest groups, and most of them are paid for with ‘dark money’ requiring no donor disclosure.”¹² Wesleyan’s press release was even cited by Sen. Angus King (I-ME) in a Senate

10 “Interest Group Advertising Pours Into Senate Races,” Wesleyan Media Project. Retrieved on July 21, 2014. Available at: <http://mediaproject.wesleyan.edu/2014/04/29/interest-group-advertising-pours-into-senate-races/> (April 29, 2014).

11 Martha T. Moore, “Ads ahead of 2012 pace as issue groups swamp candidates,” *USA Today*. Retrieved on July 21, 2014. Available at: <http://onpolitics.usatoday.com/2014/04/29/campaign-ads-senate-wesleyan-media-project/> (April 29, 2014).

12 Editorial, “Retired justice speaks up: Stinging dissent on political cash,” *The Boston Globe*. Retrieved on July 21, 2014. Available at: <http://www.bostonglobe.com/opinion/editorials/2014/05/04/retired-justice-speaks-stinging-dissent-political-cash/EbNqyf1BV4zstZOJo1onMJ/story.html> (May 5, 2014).



Rules and Administration Committee hearing.¹³

The commentary by those citing the Wesleyan Media Project was clear and consistent: political advertising for the midterm elections was on the rise, spurred in large part by groups who do not disclose their donors. But a closer look at Wesleyan’s report shows that it actually tracked a lot more than political advertising, including spending on issue speech as well.

Wesleyan states, “[i]n Senate races, 59 percent of interest group airings were sponsored by 501c3, 501c4 and 501c6 groups,”¹⁴ but 501(c)(3) charitable organizations are prohibited by law from contributing to candidates or making independent expenditures in support of or opposition to candidates. They cannot spend “in Senate races” at all. Is Wesleyan accusing these groups of openly breaking the law? They never say so.

The more likely explanation is that Wesleyan is conflating spending on issue speech – such as, “We should have policy X” – with express advocacy – “Vote for candidate Y.” 501(c)(3)s, which do not disclose their donors, can spend unlimited amounts talking about issues and policy. By conflating spending on issue speech with spending on express advocacy, Wesleyan inflates their campaign spending figures, creates “junk disclosure,” and in particular exaggerates the amount of money being spent by groups who do not disclose their donors. The result is a misleading, but more newsworthy statistic, and few citizens notice the difference.

This is irresponsible because the categories of speech and the type of entity speaking matter. Disclosure is burdensome, and if it were required merely to organize around issues, citizens could not join together and speak about virtually any topic without first registering with the government and having their names, home addresses, employers, and occupations listed in a public database for all to see.

501(c)(4) social welfare organizations and 501(c)(6) trade associations, so named for the section of the Internal Revenue Code they are organized under, can engage in limited political spending, but are also distinct from traditional spenders like candidates, political committees, and political parties in important ways. In order to maintain their tax status, (c)(4)s and (c)(6)s can’t spend more than 49 percent of their overall activities on politics. This is not true of political committees and political parties, which are organized for a primarily political purpose.

When individuals donate to a political committee or political party, they know those funds will be used to support or oppose candidates. The same is not at all true of donors to non-primarily political 501(c)(4) social welfare organizations, 501(c)(5) labor unions, and 501(c)(6) trade associations. People contribute to these 501(c) groups not because they agree with everything the organization does, or particular political positions it takes, but because on balance they think it provides a voice for their views. To publicly identify contributing individuals with communications for which they

¹³ U.S. Senator Angus King, “King Calls for Expanded Disclosure as New Report Highlights Increased Prevalence of Dark Money in U.S. Elections,” Office of Senator Angus King. Retrieved on July 21, 2014. Available at: <http://www.king.senate.gov/newsroom/press-releases/king-calls-for-expanded-disclosure-as-new-report-highlights-increased-prevalence-of-dark-money-in-us-elections> (April 30, 2014).

¹⁴ *Ibid.* 10.

had no advance knowledge and may even oppose is both unfair to members and donors, and misleads the public. It is “junk disclosure” – disclosure that serves little purpose other than to provide a basis for official or private harassment, and that may actually misinform the public.

Inflated, misleading statistics like the ones put out by the Wesleyan Media Project are useful for anti-speech activists railing against political spending and for such groups trying to raise more money – but not for voters.

Artificially Inflating the Role of Business in Politics by Misattributing Individual Contributions

In addition to confusing different forms of speech, disclosure-based reporting often confuses different kinds of speakers, most commonly by attributing contributions from individuals to their employers. This can create the appearance of illegal corporate contributions to candidates when nothing of the sort occurred.

This misattribution is common because disclosure regulations often require that a donor be asked to report their employer when making political contributions. For example, contributions from individuals to federal candidates that exceed \$200 require the candidate to use “best efforts” to ask contributors to disclose their name, address, employer, and occupation.¹⁵ That information is stored in an online public database along with the contribution amount and the entity receiving the contribution.

The Center for Responsive Politics (CRP) is one of the most cited sources for disclosure data, compiled on its OpenSecrets.org website. CRP aggregates and reports individual contributors by their employer, creating data that has often been wrongly cited in news reports to suggest a corporate endorsement of federal candidates. For one prominent example, the page of “Top Contributors” to President Barack Obama’s 2012 campaign lists University of California, Microsoft, Google, the United States Government, and Harvard University as the largest contributors to his campaign.¹⁶ CRP is careful to note in easily overlooked fine print that, “[t]he organizations themselves did not donate, rather the money came from the organizations’ PACs, their individual members or employees or owners, and those individuals’ immediate families,” but that disclaimer tends to go missing in the media.¹⁷

For example, on September 13, 2012, *The New York Times* ran a front-page article titled “Fossil Fuel Industry Ads Dominate TV Campaign” which states, “Mr. Romney, for example, has accepted \$3 million in contributions from Oxbow, a coal company controlled by William Koch, a brother of David Koch.”¹⁸ In reality, it is Oxbow’s PAC, employees, and owners that contributed, in total, about

15 “Federal Election Commission Campaign Guide: Congressional Candidates and Committees,” Federal Election Commission. Retrieved on July 21, 2014. Available at: <http://www.fec.gov/pdf/candgui.pdf> (June 2014), p. 63.

16 “Barack Obama (D): Top Contributors,” Center for Responsive Politics. Retrieved on July 21, 2014. Available at: <http://www.opensecrets.org/pres12/contrib.php?cycle=2012&id=N00009638> (March 25, 2013).

17 *Ibid.*

18 Eric Lipton and Clifford Krauss, “Fossil Fuel Industry Ads Dominate TV Campaign,” *The New York Times*. Retrieved on July 21, 2014. Available at: <http://www.nytimes.com/2012/09/14/us/politics/fossil-fuel-industry-opens-wallet-to>



\$3 million to Romney's campaign. Corporations are prohibited by law from contributing to federal candidates like Mr. Romney. *The Times'* phrasing misleads its readers both about who contributed what, and about the legality of corporate contributions.

Another example of misusing CRP data is MapLight and *Wired's* "Influence tracker" widget, which purports to make "patterns of money and influence more transparent."¹⁹ The MapLight website, which hosts the Influence Tracker data, contains no clear disclaimer that the contributions listed are not corporate contributions, and features a "Companies" tab, which lists the companies whose PACs and employees have contributed the most to candidates.

Organizations advocating for greater regulation of political speech also frequently misrepresent individual and PAC contributions as illegal corporate contributions. In May 2014, Citizens for Responsibility and Ethics in Washington (CREW) released a report titled "Return on Investment" that attributed contributions to members of the House Ways and Means Committee to those contributors' employers.²⁰ For example, the report states, "[House Ways and Means Committee Chairman Dave Camp (R-MI)] received nearly 20 percent of his contributions—\$64,000—from General Electric, which has a wide-ranging tax lobbying agenda before the committee."²¹ Like Oxbow and other corporations, General Electric cannot legally contribute to federal candidates. CREW's report discusses "contributions" to committee members from additional companies such as New York Life Insurance Co., Honeywell, PricewaterhouseCoopers, and UPS. The entire basis of CREW's report is to use disclosed contributions from individuals and PACs to create the misleading appearance of illegal activity by corporations, concluding "companies showering members of the Ways and Means Committee with campaign contributions will expect to get their money's worth."²²

Such reports ignore the facts about disclosure misinform and mislead the public. Citizens are poorly informed about campaign finance laws to begin with, making it easy for interest groups to misrepresent disclosure information to advance their own agenda.

Guilt by Association

Another reason disclosure-based reporting so frequently fails to live up to its lofty rhetoric is that it is rarely reported in a fair or complete context. In most cases, activists use disclosure information as ammunition to attack their political opposition with ad hominem arguments and guilt by association tactics. Proponents of stringent disclosure requirements often argue that it will make politics more honest and accountable, but the plethora of ugly attacks aided by disclosure information suggests otherwise.

defeat-obama.html (September 13, 2012), p. 2.

19 "MapLight U.S. Congress: Research Guide," MapLight. Retrieved on July 21, 2014. Available at: <http://maplight.org/us-congress/guide> (2014).

20 "Return on Investment," Citizens for Responsibility and Ethics in Washington. Retrieved on July 21, 2014. Available at: http://www.citizensforethics.org/page/-/PDFs/Reports/Return_on_Investment_Ways_and_Means_Committee_Tax_Breaks_CREW_05_19_2014.pdf?nocdn=1 (May 16, 2014).

21 *Ibid.*, p. 3.

22 *Ibid.*

Rachel Maddow's reporting on the Koch brothers offers an illuminating example. In a January 2014 segment of her MSNBC program, "The Rachel Maddow Show," Maddow claimed that the well-known conservative donors were involved in promoting a Florida bill to drug test welfare recipients, saying "Now, if you want to know what these Koch brothers-affiliated state groups are working on... in Florida they, at least, have been promoting forced drug tests for people who are on welfare."²³

Maddow based this accusation on the Florida-based Foundation for Government Accountability's (FGA) support for the drug-testing bill, and the fact that FGA is a member of the State Policy Network (SPN), an organization to which the Koch brothers contribute. This tenuous connection was put in proper context by research from NewsBusters' Noel Sheppard that revealed that Maddow's employer, MSNBC, actually has the same relationship to FGA that the Kochs do. MSNBC's parent company, Comcast, contributes to the State Policy Network. As Erik Wemple noted for *The Washington Post*, "[t]he Kochs' extensive reach notwithstanding, they cannot be connected to *everything*.... Maddow didn't treat her readers to an explication of just how she made the connection between FGA, SPN and Koch. Salon reported last year that Comcast has contributed to SPN, which might just make the FGA a 'Comcast-affiliated group.' Comcast is the parent company of MSNBC."²⁴

Rather than back down from a refuted claim, Maddow doubled down, despite both the Koch brothers and FGA stating publicly that the Kochs had no involvement with either FGA or the drug-testing bill. Maddow's search for a connection turned up only that FGA had received an intern through the Charles Koch Summer Fellow Program, which provides summer interns to over 80 organizations, including the Center for Competitive Politics. To Maddow, this was enough of a connection to go back on the air with another story claiming the Kochs were to blame for all of FGA's actions.

It's a hallmark of bad reporting to form a conclusion and then hunt for evidence in support of it, but it's also easy to do with disclosure laws that create mountains of easily exploitable data that voters will not critically examine themselves. As a result, activists have an easy time picking and choosing what to emphasize and what to ignore. Disclosure, while intended to improve public knowledge, actually provides the raw material for conspiracy theories. As Wemple concluded for *The Washington Post*, "[w]e'll surely hear about any damning evidence [Maddow] and her producers come across. But if they find evidence corroborating the Kochs' side of the story, will we hear about that?"²⁵

Other examples of this style of conspiracy theory journalism include *The New York Times* writing about the evolution of campaign financing in the states in a January 2014 piece titled, "A National Strategy Funds State Political Monopolies."²⁶ In June 2014, *Politico* got in on the act with a piece

23 Erik Wemple, "MSNBC's Rachel Maddow hunkers down on Koch Bros. claim," *The Washington Post*. Retrieved on July 21, 2014. Available at: <http://www.washingtonpost.com/blogs/erik-wemple/wp/2014/01/08/msnbcs-rachel-maddow-hunkers-down-on-koch-bros-claim/> (January 8, 2014).

24 *Ibid.*

25 Erik Wemple, "MSNBC's Rachel Maddow recommits to her slam on Koch brothers," *The Washington Post*. Retrieved on July 21, 2014. Available at: <http://www.washingtonpost.com/blogs/erik-wemple/wp/2014/01/28/msnbcs-rachel-maddow-recommits-to-her-slam-on-koch-brothers/> (January 28, 2014).

26 Nicholas Confessore, "A National Strategy Funds State Political Monopolies," *The New York Times*. Retrieved on July 21, 2014. Available at: <http://www.nytimes.com/2014/01/12/us/politics/a-national-strategy-funds-state-political->



about the liberal Democracy Alliance, titled “Inside the vast liberal conspiracy.”²⁷ Its opening paragraph encapsulates the disclosure conspiracy theory mentality, stating, “[p]icture this: millionaires and billionaires gathering under tight security in fancy hotels with powerful politicians and operatives to plot how their network of secret-money groups can engineer a permanent realignment of American politics.”²⁸ It’s an exciting scene to imagine, and sensation comes before truth in the world of disclosure-based reporting.

Beyond alleging grand conspiracies, however, disclosure data can also facilitate the vilification of a particular individual or group. One such example comes from a Center for Responsive Politics blog post titled “The Keating \$50,000.”²⁹ In the post, CRP reveals that individuals working for the law firm Keating, Muething and Klekamp contributed a total of roughly \$50,000 to the 2008 presidential campaign of Senator John McCain (R-AZ). The article was written and titled to allude to the “Keating 5,” a major scandal from the late 1980s and early 1990s in which five Senators, including Senator McCain, were accused of improperly intervening in an investigation of the Lincoln Savings and Loan Association on behalf of a major campaign contributor, Charles Keating.³⁰

By 2008, Charles Keating had no involvement with the law firm he helped found over a half century earlier. The contributions CRP’s blog post report on come from employees of the firm who had no connection to Keating or the decades-old scandal. CRP knew this information, but failed to clue readers in until briefly mentioning in the penultimate paragraph that “Charles Keating, who went to prison for defrauding investors, is now 84, according to reports, and appears to be uninvolved in the law firm he helped found more than 50 years ago.”³¹ Yet, if Keating was not involved, there’s no story. A *Cleveland Plain Dealer* article later revealed, “Massie Ritsch, of the Center for Responsive Politics, says he posted the story because it was a matter of ‘interesting political trivia.’”³² But it’s only interesting insofar as it associates legal contributions from individuals to the candidate of their choice with a major scandal from nearly 20 years prior. As *The Plain Dealer* noted, “So what’s the problem? It is that Keating’s name is toxic, and the current contributions are not, or shouldn’t be.”³³ Once again, disclosure information was used by CRP to mislead rather than inform.

The irresponsible use of disclosure can pose a significant threat to candidates seeking public office as well. In the 2013 Virginia governor’s race, libertarian candidate Robert Sarvis was accused of be-

[monopolies.html?hp&_r=1](#) (January 11, 2014).

27 Kenneth P. Vogel, “Inside the vast liberal conspiracy,” *Politico*. Retrieved on July 21, 2014. Available at: <http://www.politico.com/story/2014/06/inside-the-vast-liberal-conspiracy-108171.html> (June 23, 2014).

28 *Ibid.*, p. 1.

29 Massie Ritsch, “The Keating \$50,000,” Center for Responsive Politics. Retrieved on July 21, 2014. Available at: <https://www.opensecrets.org/news/2008/09/the-keating-50000/> (September 3, 2008).

30 “Keating Five,” *The New York Times*. Retrieved on July 21, 2014. Available at: http://topics.nytimes.com/top/reference/timestopics/subjects/k/keating_five/index.html (2014).

31 *Ibid.* 29.

32 Jean Dubail, “New Keating contributions to McCain? Nope,” *The Cleveland Plain Dealer*. Retrieved on July 21, 2014. Available at: http://blog.cleveland.com/openers/2008/09/new_keating_contributions_to_m.html (September 4, 2008).

33 *Ibid.*

ing a Democratic plant or ally after it was revealed that a former Obama bundler had contributed to Sarvis's campaign.³⁴ Wes Benedict, the bundler in question, tried to explain, saying, "I realize that, no matter what I say, paranoid right-wingers will think I'm a sneaky operative trying to help Democrats beat Republicans. This message is for the rational people out there.... I want Libertarians to win elections. But I also want them to run for office even when they're unlikely to win. Why? To get the public to discuss and consider libertarian principles...."³⁵ This sort of nuance cannot be communicated by disclosure reports. A list of names and contributions cannot explain why each person gave as they gave. Left to fill in the gaps ourselves, most disclosure-based reporting is as much a recitation of the author's unchecked assumptions as it is a factual telling of who, what, when, where, how, and most importantly why.

When disclosure exists as ammunition rather than enlightenment, it's doubtful whether the public truly benefits. As the cases of Sarvis and many others show, increasing access to disclosure information can derail and misinform public discussion rather than improve it.

Intimidation and Harassment

It has long been recognized that compelled disclosure of the names and addresses of contributors to viewpoint-based groups creates a risk of harassment and intimidation. In the landmark civil rights case *NAACP v. Alabama ex rel. Patterson*, the Supreme Court ruled that the state of Alabama could not force the NAACP to produce a list of its members, writing "it is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as [other] forms of governmental action."³⁶ Groups that can show that their donors face a likely risk of harassment may be exempted from disclosure requirements. The Socialist Workers Party of America, for example, has consistently been granted such an exemption.³⁷

Modern day politics is not comparable to the Jim Crow South, of course, but nor is it immune to the intimidation tactics of history. Recent years have produced many examples of donor harassment resulting from publicly available disclosure information.

One such example is recounted in a 2007 *Washington Post* article titled, "I Got Inspired. I Gave. Then I Got Scared."³⁸ In the article, New Jersey-resident Gigi Brienza recalls making a \$500 contribution to John Edwards' presidential campaign in 2004, and subsequently experiencing harassment from a

34 Meredith Jessup, "Revealed: Obama Campaign Bundler Helping Fund Libertarian in Tight Va. Gubernatorial Race," *The Blaze*. Retrieved on July 21, 2014. Available at: <http://www.theblaze.com/stories/2013/11/05/revealed-obama-campaign-bundler-helping-fund-libertarian-in-tight-va-gubernatorial-race/> (November 5, 2013).

35 Brian Doherty, "Libertarian Booster PAC Denies Supporting Robert Sarvis for Virginia Governor as Part of Democratic Party Plot," *Reason*. Retrieved on July 21, 2014. Available at: <http://reason.com/blog/2013/11/07/libertarian-booster-pac-denies-supportin> (November 7, 2013).

36 *NAACP v. Ala. ex rel. Patterson*, 357 U.S. at 462.

37 Alicia Mundy, "Socialist Workers Get Break on Donor List," *The Wall Street Journal*. Retrieved on July 21, 2014. Available at: <http://blogs.wsj.com/washwire/2013/04/26/socialist-workers-get-break-on-donor-list/> (April 26, 2013).

38 Gigi Brienza, "I Got Inspired. I Gave. Then I Got Scared," *The Washington Post*. Retrieved on July 21, 2014. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902264.html> (July 1, 2007).



known terrorist organization, Stop Huntington Animal Cruelty (SHAC). Because of her \$500 contribution to a federal candidate, Brienza's name, address, employer, and occupation was publicly disclosed and made viewable on the Federal Election Commission's website. When SHAC saw that Brienza worked for Bristol-Myers Squibb, who contracted with Huntington Life Sciences in pharmaceutical development research, SHAC put Brienza's name and address on a list of "targets" with the message, "[n]ow you know where to find them."³⁹ SHAC may not have cared about Brienza's political support of Edwards, but merely being forced to put her name, address, employer, and occupation in a public database exposed her to significant potentially life-threatening risk – all over a mere \$500 contribution to a presidential candidate.

Other recent examples of disclosure-enabled harassment are cited by Justice Clarence Thomas in his partial dissent in *Citizens United*.⁴⁰ In his dissent, Justice Thomas discusses the experience of donors to Proposition 8, a ballot question and state constitutional amendment in California that banned same-sex marriage, writing "[s]ome opponents of Proposition 8 compiled this [donor disclosure] information and created Web sites with maps showing the locations of homes or businesses of Proposition 8 supporters. Many supporters (or their customers) suffered property damage, or threats of physical violence or death, as a result. They cited these incidents in a complaint they filed after the 2008 election, seeking to invalidate California's mandatory disclosure laws. Supporters recounted being told: 'Consider yourself lucky. If I had a gun I would have gunned you down along with each and every other supporter,' or, 'we have plans for you and your friends.'"⁴¹

Justice Thomas goes on to cite media reports of retaliation against Prop 8 supporters, such as a director of the nonprofit California Musical Theater being forced to resign over his \$1,000 contribution to support Prop 8, and a restaurant manager forced to resign amidst consistent protests of her \$100 contribution to support Prop 8. In fact, there was enough donor harassment over Prop 8 to attract media coverage from *The Wall Street Journal*⁴² and *The Los Angeles Times*.⁴³

In addition to boycotts and harassment, disclosure information has also been used to threaten politically active citizens with government retaliation. In the 2008 presidential campaign, thousands of donors to Republican candidates and causes received foreboding "warning" letters in the mail from a liberal group called Accountable America. *The New York Times* reported that "[t]he warning letter is intended as a first step, alerting donors who might be considering giving to right-wing groups to a variety of potential dangers, including legal trouble, public exposure and watchdog groups digging through their lives."⁴⁴

³⁹ *Ibid.*

⁴⁰ *Citizens United*, 130 S. Ct. 876, 980-981 (Thomas, J., concurring in part and dissenting in part).

⁴¹ *Id.*

⁴² John R. Lott, Jr. and Bradley Smith, "Donor Disclosure Has Its Downsides," *The Wall Street Journal*. Retrieved on July 21, 2014. Available at: <http://online.wsj.com/news/articles/SB123025779370234773> (December 26, 2008).

⁴³ Steve Lopez, "Prop. 8 stance upends her life," *The Los Angeles Times*. Retrieved on July 21, 2014. Available at: <http://articles.latimes.com/2008/dec/14/local/me-lopez14> (December 14, 2008).

⁴⁴ Michael Luo, "Group Plans Campaign Against G.O.P. Donors," *The New York Times*. Retrieved on July 21, 2014. Available at: http://www.nytimes.com/2008/08/08/us/politics/08donate.html?_r=1& (August 7, 2008).

Even elected officials have threatened citizens and groups in recent years for their potential ties to certain organizations. In August 2013, Senator Dick Durbin (D-IL) sent letters on official Senate letterhead to about 300 groups alleged to be members, past-members, or supporters of the American Legislative Exchange Council (ALEC), asking their position on “Stand Your Ground” laws and promising to make the answers public. ALEC is an educational non-profit that connects state legislators, businesspeople, and policy experts to draft model legislation for introduction in their states. “Stand Your Ground” is a controversial law that was the subject of Congressional hearings after the killing of Trayvon Martin. Durbin’s letter was interpreted as a clear threat against supporters of ALEC. *The Wall Street Journal* editorialized about Durbin’s letter, “[t]ranslation: If your company engages in political debate or supports conservative groups, he will tie your name to controversies or force you to publicly disclaim positions taken by groups you support. Mr. Durbin knows that if he can drive a wedge between ALEC and its corporate donors, it will help cripple the group’s influence on issues like tax policy and education and remove a significant voice for conservative reform in the states, including Illinois.”⁴⁵

Durbin’s letter was criticized by *The Chicago Tribune* as an attempt to make an “enemies list,”⁴⁶ and a recipient of the Senator’s letter wrote in *Forbes* that they were “hard-pressed to disagree with these editorial characterizations.”⁴⁷ The Center, a recipient of the Senator’s letter, responded at the time by saying, “For a member of the United States Senate to demand to know if citizens financially support certain private groups and organizations, and what they think of certain laws, with the openly stated intention of publicizing the responses in an official Senate hearing is, we believe, an act of intimidation and an abuse of office.”⁴⁸

From public officials to activist groups, the potential for harassment resulting from disclosure is enormous. It should also not be forgotten that much harassment that results from disclosure will never be uncovered or reported. An employer who turns down a job seeker because of their past political contributions and associations is unlikely to admit that’s the reason. The same holds true for the nosy neighbor who treats an individual differently after discovering a contribution they made to a candidate or group they dislike. While many citizens work and live in tolerant areas where they need not fear being harmed for their political views, not everyone has that privilege. The examples of intimidation described above are chilling enough, but one can only imagine how much more disclosure-related harassment goes unnoticed or unreported.

45 Editorial, “Durbin Wants a List,” *The Wall Street Journal*. Retrieved on July 21, 2014. Available at: <http://online.wsj.com/news/articles/SB10001424127887324522504578653920316430206> (August 7, 2013).

46 Editorial, “Durbin’s enemies list,” *The Chicago Tribune*. Retrieved on July 21, 2014. Available at: http://articles.chicagotribune.com/2013-08-08/opinion/ct-edit-durbin-20130809_1_alec-crossroads-gps-enemies-list (August 8, 2013).

47 Tiger Joyce, “An Ominous Letter From Sen. Dick Durbin Raises Threats To The First Amendment,” *Forbes*. Retrieved on July 21, 2014. Available at: <http://www.forbes.com/sites/realspin/2013/09/11/an-ominous-letter-from-sen-dick-durbin-raises-threats-to-the-first-amendment/> (September 11, 2013).

48 David Keating, “Response to Senator Durbin,” Center for Competitive Politics. Retrieved on July 21, 2014. Available at: http://www.campaignfreedom.org/wp-content/uploads/2013/09/2013-09-16_Response-To-Senator-Durbin-final.pdf (September 16, 2013), p. 2.



Selective Outrage

In addition to the problems outlined above, pro-regulation activists selectively choose when to be outraged over political contributions. The identities of the contributor, and the whims of the activist perusing the disclosure data, dictate where scorn will be directed more so than the contributions themselves.

A good example of selective outrage is provided by the attempted boycott of Target in 2010. Minnesota-based Target Corp. attracted the ire of gay rights activists and media outlets after it contributed \$150,000 to an organization called MN Forward.⁴⁹ MN Forward was created to advocate a business-friendly policy climate in Minnesota, and it supported Rep. Tom Emmer, the Republican candidate for governor in 2010. Rep. Emmer had made lower corporate tax rates a central theme of his campaign, but he also happened to oppose same-sex marriage, and quickly left-leaning groups like MoveOn.Org and the Human Rights Campaign jumped on Target as “anti-gay.”⁵⁰ MoveOn.Org organized a boycott, and media criticism of Target spending on politics followed.⁵¹

At the same time, Best Buy made a \$100,000 contribution to MN Forward. Unlike Target, Best Buy’s contribution attracted little outrage or boycotting. The reason why was uncovered by *The Washington Post*, who reported, “[i]t has been Target, and not Best Buy, that has born the brunt of the protests. Ilyse Hogue, MoveOn.org’s director of political advocacy, said protests have focused on Target partly because it had built its reputation as ‘a progressive alternative to Wal-Mart,’ which has crossed swords with labor unions over how the company treats its employees.”⁵²

MoveOn and other groups wanted to attack Target because of its reputation, and disclosure gave them the ammunition they needed. Best Buy’s \$100,000 contribution was not made controversial because activists had a particular anti-Target agenda to push.

Still, organizations like the Center for Political Accountability (CPA) have attempted to use the Target example for years to argue that corporations should not engage in politics, or should adopt burdensome shareholder approval requirements before making contributions. Writing in *The Huffington Post* on how companies could avoid being “Target-ed” for their political contributions, CPA President Bruce Freed warned:

49 “Target Spending Company Money on Candidates,” *CBS News*. Retrieved on July 21, 2014. Available at: <http://www.cbsnews.com/news/target-spending-company-money-on-candidates/> (July 27, 2010).

50 Brody Mullins and Ann Zimmerman, “Target Discovers Downside to Political Contributions,” *The Wall Street Journal*. Retrieved on July 21, 2014. Available at: <http://online.wsj.com/news/articles/SB10001424052748703988304575413650676561696> (August 7, 2010).

51 *Ibid.*

52 Jia Lynn Yang and Dan Eggen, “Exercising new ability to spend on campaigns, Target finds itself a bull’s-eye,” *The Washington Post*. Retrieved on July 21, 2014. Available at: <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/18/AR2010081806759.html?sid=ST2010081900210> (August 19, 2010), p. 2.

“The lesson for companies: Political contributions can have serious consequences. The Supreme Court’s Citizens United decision in January 2010 allowed companies, trade associations and unions to make independent expenditures. It ushered in a new era of political spending, laced with risk. Target’s stumble, in turn, taught companies that their freedom to spend can cause more harm than good.”⁵³

In reality, however, little can be done to prevent political activists from using publicly available disclosure information to make a point. The real lesson of Target and Best Buy’s experience is that outrage over political contributions is often manufactured, and that disclosure is just another weapon in a political operative’s arsenal to launch against their political opponents.

This is not merely an observed trend; it is a deliberate strategy, explicated in detail in a leaked 2010 memo from Media Matters Action Network. According to the memo, if a hypothetical company (ACME) supports a conservative candidate or cause, “*Media Matters Action Network* will track all ACME campaign expenditures in its database and may aggressively attack ACME, or provide the information to progressive partners to attack ACME for supporting policies” that it opposes.⁵⁴ This is the true impact of disclosure information on politics.

Disclosure’s tendency to produce haphazard outrage recently drew harsh criticism following the forced resignation of Mozilla CEO Brendan Eich amidst protests over his publicly disclosed 2008 contribution of \$1,000 in support of California Proposition 8. Although harassment of Prop 8 supporters was covered in detail previously, the story of Eich, who lost his job in 2014 over a relatively small contribution made in 2008, is particularly jarring.

A bipartisan and vocal chorus of voices emerged to condemn the pressure that spurred Eich’s departure, including *Forbes* technology writer Tony Bradley (“Backlash Against Brendan Eich Crossed A Line”⁵⁵), conservative blogger Andrew Sullivan (“The Quality Of Mercy”⁵⁶), *The Atlantic*’s Conor Friedersdorf (“Mozilla’s Gay-Marriage Litmus Test Violates Liberal Values”⁵⁷), and *Slate*’s William

53 Bruce Freed, “How Companies Can Limit Political Spending Risks,” *Huffington Post*. Retrieved on July 21, 2014. Available at: http://www.huffingtonpost.com/bruce-freed/how-companies-can-limit-p_b_836088.html (March 15, 2011).

54 David Brock and Eric Burns, “Media Matters 2012 – A Three-Year Campaign,” Media Matters for America. Retrieved on July 21, 2014. Available at: <http://www.scribd.com/doc/81500396/Media-Matters-Memo#page=83> (January 26, 2010), p. 84.

55 Tony Bradley, “Backlash Against Brendan Eich Crossed A Line,” *Forbes*. Retrieved on July 21, 2014. Available at: <http://www.forbes.com/sites/tonybradley/2014/04/05/backlash-against-brendan-eich-crossed-a-line/> (April 5, 2014).

56 Andrew Sullivan, “The Quality Of Mercy,” *The Dish*. Retrieved on July 21, 2014. Available at: <http://dish.andrewsullivan.com/2014/04/06/the-quality-of-mercy/> (April 6, 2014).

57 Conor Friedersdorf, “Mozilla’s Gay-Marriage Litmus Test Violates Liberal Values,” *The Atlantic*. Retrieved on July 21, 2014. Available at: <http://www.theatlantic.com/politics/archive/2014/04/mozillas-gay-marriage-litmus-test-violates-liberal-values/360156/> (April 4, 2014).



Saletan (“Brendan Eich and the New Moral Majority”⁵⁸). Legal news site AboveTheLaw.com even pointed out, “Brendan Eich’s situation shows how donor disclosure laws can lead to reprisals that may change the legal analysis. Eich didn’t purposefully publicize his views on Prop 8. California law required the disclosure of his identity as a contributor — donating the princely sum of \$1,000.”⁵⁹

The inability of disclosure to produce consistent outcomes is further evidence that it benefits anti-speech activists and those advancing a political agenda, not voters.

58 William Saletan, “Brendan Eich and the New Moral Majority,” *Slate*. Retrieved on July 21, 2014. Available at: http://www.slate.com/blogs/saletan/2014/04/07/brendan_eich_homophobia_and_corporate_values_the_left_is_the_new_moral_majority.html (April 7, 2014).

59 Tamara Tabo, “Cupid’s Arrow Strikes Eich: OkCupid, Mozilla’s CEO, And Campaign Finance Laws,” *Above The Law*. Retrieved on July 21, 2014. Available at: <http://abovethelaw.com/2014/04/cupids-arrow-strikes-eich-okcupid-mozillas-ceo-and-campaign-finance-laws/> (April 3, 2014).

Conclusion

Despite being consistently promoted as a boon for public knowledge about the sources of support for candidates and causes, compulsory disclosure data is generally not sought out by the voters themselves. What citizens hear about disclosure data is filtered through a network of political activists who are able to wield tremendous power over public opinion. Through the variety of techniques explored in this report – some intentional, some sloppy – disclosure information can be easily misused to push ideological or partisan agendas. The Center’s experience observing disclosure-based reporting and activism suggests that this abuse of disclosure data is commonplace, and that public knowledge about candidates and the campaign finance system regularly suffers from misleading reports.

It is rare for disclosure data to be used carefully, in proper context, and with opportunities for different voices to give their view. The true effect of disclosure is often to accelerate a partisan arms race of smear attacks on opposing candidates, organizations, and donors. Rather than hold people accountable, disclosure chills speech and facilitates ad hominem insults and attacks. Rather than inform the public, disclosure affords anti-speech activists the opportunity to sensationalize and mislead. In light of this reality, existing campaign finance disclosure regulations and arguments for increased disclosure requirements should be viewed with renewed skepticism.



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