

# LEGAL MEMORANDUM

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## Compulsory Donor Disclosure: When Government Monitors Its Citizens

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### Abstract

*The right of every American to support causes in which he or she believes is under attack through compulsory disclosure laws. These excessive disclosure laws do more harm than good and violate Americans' fundamental rights to free political speech, association, and privacy. Anti-First Amendment activists and many misled Americans see these laws as a positive effort to "shine a light" on groups and individuals who are speaking out during campaigns. The reality is starkly different: Disclosure, particularly the compulsory disclosure of donors to causes and candidates, has failed. Vocal calls for more disclosure are not calls for transparency and good governance—despite their proponents' arguments to the contrary. Rather, such attempts seek to increase the size and power of government while enabling activists to harass those with whom they disagree.*

Recently, the federal Office of Personnel Management was attacked by hackers. As a result, the personnel data and security information of 21.5 million current and former federal employees were stolen by bad actors.<sup>1</sup> This theft represents a fundamental breach of the privacy of citizens who happen to be government employees. The culprits, if ever discovered, will face sanctions and jail time for their crimes.

When carried out by criminals on the Internet, these violations are called "crimes," but when perpetrated by the government, similar acts are called "disclosure." Political speech in America is subject to an ever-expanding disclosure regime as more and more private information—including citizens' names, home addresses, employers, and occupations, as well as the groups with which they affiliate—is demanded by local, state, and federal government bureaucrats

### KEY POINTS

- Political speech in America is subject to an ever expanding disclosure regime as more and more private information—including citizens' names, home addresses, employers, and occupations, as well as the groups with which they affiliate—is demanded by local, state, and federal government bureaucrats as a prerequisite for talking about elections, issues, and politics generally.
- Disclosure, particularly the compulsory disclosure of donors to causes and candidates, has failed.
- Far from informing the public, personal information is used by the media and activists to mislead the citizenry, to generate selective outrage over disfavored political speech, and to silence individuals and groups of concerned citizens who are trying to promote their political message.
- The regulations imposed to create these databases of political speakers have caused substantial harms, both to individuals caught up in the government's web and to groups that have chosen to express their political beliefs on behalf of their members.

This paper, in its entirety, can be found at <http://report.heritage.org/lm167>

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as a prerequisite for talking about elections, issues, and politics generally. This push for the creation of massive government databases of citizens' personal information is promoted by anti-First Amendment activists and viewed by many misled Americans as a positive effort to "shine a light" on groups and individuals who are speaking out during campaigns.

The reality is starkly different. Disclosure, particularly the compulsory disclosure of donors to causes and candidates, has failed. This personal information, rather than informing the public, is used by the media and activists to mislead the citizenry, to generate selective outrage over disfavored political speech, and to silence individuals and groups of concerned citizens who are trying to promote their political message. Far from being costless, the regulations imposed to create these databases of political speakers have caused substantial harms, both to individuals caught up in the government's web and to groups that have chosen to express their political beliefs on behalf of their members.

Conservatives are well aware of the damage accompanying this dragnet. In 2012, supporters of traditional marriage felt the sting of government abuse when the Internal Revenue Service (IRS) leaked the National Organization for Marriage (NOM) donor list to the Human Rights Campaign, an organization that supports same-sex marriage. After years of fighting in court and testifying to Congress, the IRS admitted that it had abused its authority and disclosed private information. The agency agreed to pay NOM \$50,000 to settle the matter.<sup>2</sup>

This settlement, however, does not come close to undoing the permanent damage inflicted by government bureaucrats' intentional leaking of NOM supporters' private information. Once something is posted online, it is public forever. Because NOM was forced by the IRS to disclose this private information, the IRS had the capacity to leak that information to

NOM's opponents, whether intentionally or by accident. And it was leaked.

Many other conservative and Tea Party groups have suffered at the hands of reckless regulators as well. In the spring of 2013, the IRS admitted that it had discriminated against hundreds of groups with conservative-sounding names, asking them inappropriate questions about their activities and members and subjecting their applications for tax-exempt status to lengthy delays.<sup>3</sup> In Wisconsin, a years-long aggressive investigation into allegations of illegal coordination between Governor Scott Walker and his supporters led to armed raids on family homes, the seizure of countless personal documents, and gag orders forbidding those under investigation from speaking out.<sup>4</sup> Things got so out of hand that the Wisconsin Supreme Court had to step in to end this unconstitutional abuse of citizens' First Amendment rights.<sup>5</sup>

In the instances noted above and many others like them, the government and its apologists can claim that mistakes were made, and this was not how the system was meant to work. Yet these abuses are made possible by the expansive body of law that governs campaigns and political activity in America today.

Quite plainly, the right of every American to support causes in which he or she believes is under attack through compulsory disclosure laws. Citizens' privacy is being invaded, exposing them to harassment because of what they believe and the causes they support. The government is restricting their ability to work together as a group; supporters are being intimidated, and their voices are being silenced.

In order to uphold America's traditional values of privacy and free speech, as well as to foster a healthier political climate, it is time for a serious conversation about the costs of forcing political groups to report their activities and the identities of their donors to the government. This paper highlights the tangible costs

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1. OFFICE OF PERSONNEL MGMT., INFORMATION ABOUT OPM CYBERSECURITY INCIDENTS, available at <https://www.opm.gov/cybersecurity/>.
  2. Mackenzie Weinger, *IRS Pays \$50K in Confidentiality Suit*, POLITICO (June 24, 2014), <http://www.politico.com/story/2014/06/irs-nom-lawsuit-108266>.
  3. TREASURY INSPECTOR GENERAL FOR TAX ADMIN., INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW (May 14, 2013), available at <https://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>.
  4. David French, *Wisconsin's Shame: "I Thought It Was a Home Invasion,"* NAT'L REV. (Apr. 20, 2015), <http://www.nationalreview.com/article/417155/wisconsin-shame-i-thought-it-was-home-invasion-david-french>.
  5. Patrick O'Connor, *Wisconsin Court Ends Investigation Into Scott Walker's Recall Election Bid*, WALL ST. J. (July 16, 2015), available at <http://www.wsj.com/articles/wisconsin-court-ends-investigation-into-scott-walkers-recall-election-bid-1437062374>.
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of these restrictive disclosure laws and demonstrates how they fail to improve political discourse.

## Undisclosed Costs of Compulsory Disclosure

The most obvious and injurious harm caused by compulsory disclosure is harassment and intimidation for one's political beliefs. This is far from a new phenomenon. Throughout history, groups with controversial or unpopular opinions have been harassed by those in power. Unsurprisingly, government-mandated reporting of private information has often facilitated the means by which such harassment can occur. In the 1950s, for example, Alabama attempted to gain access to the membership lists of the NAACP in order to harass and intimidate its members and shut down the burgeoning civil rights movement that the NAACP was promoting, fostering, and growing with its speech and demonstrations.<sup>6</sup>

However, such harassment for one's political beliefs is far from a relic of the past. In today's polarized political climate, the possibility that personal information will be misused is as omnipresent as ever. For instance, in 2008, the controversial issue of same-sex marriage was put to voters in California in the form of Proposition 8, a measure that banned gay marriage in the state. As Justice Clarence Thomas outlined in his partial dissent in *Citizens United*:

Some 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.... 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."<sup>7</sup>

Such harassment and intimidation for simply expressing one's political beliefs are a direct result of access to personal information demanded by the government.<sup>8</sup>

These threats resulting from forced disclosure extend well beyond the election season. An often overlooked danger of mandatory reporting of all political contributions and affiliations is that records are preserved permanently and easily accessed in perpetuity on the Internet. As political beliefs and political preferences change over time, positions that were in the mainstream of political thought become controversial and may lead to blacklisting or other forms of harassment.

Take the example of Brendan Eich. In 2014, Eich, the successful CEO and co-founder of Mozilla, the maker of the Web browser Firefox, was forced to resign in the face of potential boycotts. The reason for the outrage stemmed from a \$1,000 donation that Eich had made six years earlier in support of Proposition 8—and preserved for all time in California's political disclosure database.<sup>9</sup>

The ousting of Eich demonstrates the harms of such databases. In 2008, expressing your opposition to gay marriage was a legitimate, if controversial, political opinion held by many Americans including President Barack Obama, but by 2014, at least in California, such expressions were so taboo as to demand the modern-day equivalent of a pillorying. Beyond that, it remains unclear whether Eich even still held his political position: Like President Obama, he may very well have "evolved" on the issue.<sup>10</sup> The permanent record created by disclosure databases, however, forever branded Eich as "anti-gay."

The threats stemming from government reporting of citizens' political preferences go beyond direct harassment and intimidation. Such reporting violates one of America's most cherished rights: the right to privacy. The fundamental right of Americans to express political thoughts and beliefs and

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6. NAACP v. Alabama, 357 U.S. 449 (1958).

7. Citizens United v. FEC, 130 S. Ct. 876, 980–981 (Thomas, J., concurring in part and dissenting in part).

8. See also Thomas M. Messner, *The Price of Prop 8*, HERITAGE FOUNDATION BACKGROUNDER No. 2328 (Oct. 22, 2009), available at [http://s3.amazonaws.com/thf\\_media/2009/pdf/bg2328es.pdf](http://s3.amazonaws.com/thf_media/2009/pdf/bg2328es.pdf).

9. Brian Fung, *Mozilla's CEO Steps Down Amid Gay Marriage Furor*, WASH. POST (Apr. 3, 2014), <https://www.washingtonpost.com/news/the-switch/wp/2014/04/03/mozillas-ceo-steps-down-amid-gay-marriage-furor/>.

10. Josh Gerstein, *Obama Evolves Again on Same-sex Marriage*, POLITICO (Oct. 20, 2014), <http://www.politico.com/blogs/under-the-radar/2014/10/obama-evolves-again-on-same-sex-marriage-197348>.

to associate with likeminded people without having to reveal oneself to the government is enshrined in the First Amendment: “Congress shall make no law... abridging the freedom of speech.”

Even beyond this constitutional guarantee, private political expression has a long and cherished history in this country. Thomas Paine wrote his highly influential pamphlet, *Common Sense*, anonymously. Paine’s funder and publisher, Benjamin Rush, also remained anonymous. James Madison, Alexander Hamilton, and John Jay penned the *Federalist Papers*, their ringing vindication of the U.S. Constitution, under pseudonyms. And on Election Day, all Americans are able to express their political opinion privately, letting their vote—and not their name, address, employer, or occupation—be what counts. Regrettably, many disclosure laws violate this fundamental right to free, private expression.

### Undisclosed Failures of Disclosure

Given the staggering cost of these laws, one might assume that their benefits are equally as impressive. That is certainly the argument pressed by proponents of such regulations, who argue that forcing groups that make political expenditures to report the names, home addresses, occupations, and employers of their donors allows the public to be better informed about who stands to gain or lose from a particular policy and be on the lookout for corrupt deals between elected officials and their supporters. Armed with this information, voters can evaluate politicians’ performance more effectively and punish those who appear to betray their interests.

So the story goes, but is it true? If so, Americans would expect to find less corrupt government and more satisfied voters when government forces the

reporting of donors’ private information. Studies conducted in the states, however, have found no correlation between campaign finance laws and corruption<sup>11</sup> and no correlation between campaign finance laws and higher trust or confidence in government.<sup>12</sup> In short, far from an unquestioned public good, there is no evidence that states with stricter disclosure laws are better off.

One reason disclosure fails to accomplish its goals is that voters are generally not interested in the information it compels. Recent studies show that after accounting for information gained from sources such as news accounts and public statements by candidates, mandated disclosure data provides little additional useful information to voters. In particular, “disclosure information in news accounts does not help voters better identify the positions of interest groups.”<sup>13</sup> In a controlled experiment, access to disclosure information 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.<sup>14</sup>

Rather than serving as a direct tool for voters, then, data produced by mandated disclosure laws are used primarily by activists and media organizations. These groups often have their own political agenda, and because of the time and expertise required to sift through and interpret the data produced by the complex web of campaign finance laws, they have tremendous leeway to mislead the public.

One common way that groups exaggerate the effect of money in politics is by attributing to employers the contributions made by individuals.<sup>15</sup> No one cares if someone gives \$500 to a Senate candidate, but if he or she happens to work for a large

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11. Adriana Cordis & Jeff Milyo, *Do State Campaign Finance Reforms Reduce Public Corruption?* (Mercatus Center, George Mason University, Working Paper No. 13-09, 2013), available at [http://mercatus.org/sites/default/files/Milyo\\_CampaignFinanceReforms\\_v2.pdf](http://mercatus.org/sites/default/files/Milyo_CampaignFinanceReforms_v2.pdf).
  12. Jeff Milyo, *Do State Campaign Finance Reforms Increase Trust and Confidence in State Government?*, Presented at the Annual Meeting of the Midwest Pol’l Science Ass’n (Apr. 2012), available at [http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government\\_v3.pdf](http://web.missouri.edu/~milyoj/files/CFR%20and%20trust%20in%20state%20government_v3.pdf).
  13. David M. Primo, *Information at the Margin: Campaign Finance Disclosure Laws, Ballot Issues, and Voter Knowledge*, 12:2 ELECTION L. J. at 15 (2013), available at <http://www.campaignfreedom.org/wp-content/uploads/2013/07/Information-at-the-Margin-Campaign-Finance-Disclosure-Laws-Ballot-Issues-andVoter-Knowledge.pdf>.
  14. David M. Primo, *Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters and Stifle Public Debate*, INST. FOR JUSTICE at 18 (Oct. 2011), available at [http://www.ij.org/images/pdf\\_folder/other\\_pubs/fulldisclosure.pdf](http://www.ij.org/images/pdf_folder/other_pubs/fulldisclosure.pdf).
  15. Luke Wachob, *Misusing Disclosure: How a Policy Intended to Increase Voter Knowledge Often Misleads the Public*, CTR. FOR COMPETITIVE POL. at 7 (Aug. 2014), available at [http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-08-01\\_Wachob\\_Issue-Review\\_Misusing-Disclosure.pdf](http://www.campaignfreedom.org/wp-content/uploads/2014/07/2014-08-01_Wachob_Issue-Review_Misusing-Disclosure.pdf).

corporation alongside others who donate to the same candidate, those contributions can be combined to create a story out of thin air. “Hundreds of Exxon-Mobil employees contribute to Senator Smith” is not worth printing, but “Exxon-Mobil contributes hundreds of thousands of dollars to Senator Smith” reads like a scandal. Such a headline, based on the intentionally misleading tactic of treating employee contributions as a form of employer contribution, is made possible by U.S. disclosure laws, which mandate the reporting of donors’ employment information—despite the fact that corporate employers are prohibited from making direct contributions to federal candidates or directing or ordering their employees to make contributions.<sup>16</sup>

Another common tactic is to conflate speech about issues with speech urging the election or defeat of candidates. With this one little trick, any broadcast communication that so much as mentions a candidate’s name near an election can be counted as political spending. In addition to exaggerating the amount of money being spent on campaigns, this approach treats supporters of nonprofits that occasionally speak on public issues like donors to candidates and political parties. This approach is unfair and misleading, because while individuals who donate to a political committee or political party know that those funds will be used to support or oppose candidates, the same is not at all true for donors to nonprofits. Such information can accurately be called “junk disclosure.”

### **Disclosure Data as Political Weapon**

Even when facts are relayed accurately, coverage of political donors often suffers from selective outrage. By shining a light on some donors and not others, activists can use the media to attack their political opponents. The most high-profile example of this strategy happened to Target in 2010. Target Corporation, which is based in Minnesota, gave \$150,000 to MN Forward, a group that promoted pro-business

policies and politicians in the state.<sup>17</sup> MN Forward then supported a Republican candidate for governor who advocated lower corporate tax rates. However, the candidate also opposed same-sex marriage. Before long, liberal activists began a campaign targeting Target for supporting an “anti-gay” politician.

The public shaming of Target was unfair for several reasons. First, Target did not give money to the candidate. Rather, the company gave money to an organization committed to supporting business-friendly policies. MN Forward’s support of the Republican candidate was motivated by his position on taxes, not his opposition to same-sex marriage. Further, Best Buy had also contributed \$100,000 to MN Forward and received virtually no negative publicity. *The Washington Post* found out why: “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.”<sup>18</sup> In other words, Target was seen as vulnerable, and it was perceived that the pro-business message of MN Forward could be silenced by drying up its funding.

In this case and many others, the contribution is not the true source of controversy, and those who are publicizing it are not interested in enhancing public knowledge. In other words, the informational interest underlying disclosure laws does not withstand scrutiny. The data produced by these laws are little more than a weapon for political activists. A leaked strategy memo from Media Matters Action Network explained exactly how left-wing groups would use disclosure as a cudgel against a hypothetical corporation it chose to target: “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 the organization opposes.<sup>19</sup>

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16. 52 U.S.C. §30118.

17. *Target Spending Company Money on Candidates*, CBS News (July 27, 2010), <http://www.cbsnews.com/news/target-spending-company-money-on-candidates/>.

18. Jia Lynn Yang & Dan Eggen, *Exercising New Ability to Spend on Campaigns, Target Finds Itself a Bull’s-eye*, WASH. POST at 2 (Aug. 19, 2010), <http://www.washingtonpost.com/wp-dyn/content/article/2010/08/18/AR2010081806759.html?sid=ST2010081900210>.

19. David Brock & Eric Burns, *Media Matters 2012—A Three-Year Campaign*, MEDIA MATTERS FOR AMERICA at 84 (Jan 26, 2010), available at <http://www.scribd.com/doc/81500396/Media-Matters-Memo#page=83>.

Many citizens are both ill-equipped to discern genuine outrage from manufactured outrage and, as studies show, disinterested in evaluating the truthfulness of claims based on disclosure data in the face of these and other tactics used to mislead them. Even experts often disagree on how to interpret this information, and the news cycle moves too fast to facilitate a reasoned debate. The result is that nearly every advocacy group can make it appear that “Big Money” is against them.

When laws restricting access to guns fail to pass, for example, gun control advocates are quick to point the finger at political spending by the National Rifle Association. When they do pass, however, gun rights activists are equally quick to blame Michael Bloomberg and other wealthy supporters of gun control. This response is reflected in nearly every major policy dispute in American politics. Environmentalists, for example, complain of the influence of “Big Oil,” while skeptics of alternative fuels bemoan prominent environmentalist Tom Steyer and subsidies to “green” energy. Likewise, organized labor complains about the Koch brothers, while right-to-work advocates complain about organized labor. The merits of the policies and the actual desires of voters are effectively ignored.

Supporters of mandated reporting requirements claim that the problem is insufficient information about political spending. They rail against advocacy by nonprofit groups and advocate more stringent speech regulation, whether by urging Congress to pass the DISCLOSE Act or by pressuring agencies like the IRS or the Securities and Exchange Commission to write more invasive disclosure rules. Nevertheless, over 95 percent of spending on federal races in 2014 and 2012 came from groups that report the identities of their donors.<sup>20</sup>

As with any law, 100 percent compliance is not a realistic goal, and in seeking to reach it, Americans risk wasting resources and trampling on citizens’ privacy rights. No one likes crime, but this country

would not support stationing a cop on every street corner to eliminate it entirely. Creating a police state for political speech is just as dangerous. As it stands now, campaigns and political speech are more heavily regulated than at any other time in U.S. history.

This fact alone should force us to reconsider Americans’ never-ending push for more disclosure laws. As Justice Anthony Kennedy said in his majority opinion in *Citizens United*, “The First Amendment does not permit laws that force speakers to retain a campaign finance attorney, conduct demographic marketing research, or seek declaratory rulings before discussing the most salient political issues of our day.”<sup>21</sup> Yet complicated disclosure regimes create exactly that situation.

### **A Universe of Regulatory Red Tape**

When lawmakers set out to track every contribution and expenditure, they create a universe of regulatory red tape so extensive that no one, save for a legal expert, can navigate the maze. Today, the federal campaign finance regulations promulgated by the Federal Election Commission alone contain over 376,000 words. To these can be added nearly 2,000 advisory opinions and 7,000 reported enforcement actions that one might peruse to try to understand the law and the regulations. Many of these directives detail what political groups need to disclose, how they need to do it, how often they need to file these disclosure reports, what information they need to collect, and from whom they need to collect it. The rules are different for campaigns, for PACs, and for nonprofits; they differ based on what is said, when it is said, and about whom it is being said; and the rules and regulations for state elections vary widely from state to state.<sup>22</sup>

Not surprisingly, this enormous mass of bureaucratic red tape harms small organizations. While the campaign committees of prominent candidates have the knowledge, connections, and financial ability to hire the best attorneys to ensure compliance with the labyrinth of regulations, individuals and

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20. Matt Nese, *Five Misconceptions About “Dark Money,”* CTR. FOR COMPETITIVE POL. at 1 (July 2015), available at [http://www.campaignfreedom.org/wp-content/uploads/2015/04/2015-07-08\\_Two-Page\\_Nese\\_Five-Misconceptions-About-Dark-Money.pdf](http://www.campaignfreedom.org/wp-content/uploads/2015/04/2015-07-08_Two-Page_Nese_Five-Misconceptions-About-Dark-Money.pdf).

21. *Citizens United v. FEC*, 558 U.S. 310, 324 (2010).

22. Bradley A. Smith, *Comments on Federal Election Commission Hearing on Advance Notice of Proposed Rulemaking in Light of McCutcheon v. FEC*, CTR. FOR COMPETITIVE POL. at 1 (Feb. 11, 2015), available at [http://www.campaignfreedom.org/wp-content/uploads/2015/02/2015-02-11\\_Smith-Oral-Remarks\\_FEC\\_McCutcheon-ANPRM-Public-Hearing.pdf](http://www.campaignfreedom.org/wp-content/uploads/2015/02/2015-02-11_Smith-Oral-Remarks_FEC_McCutcheon-ANPRM-Public-Hearing.pdf). See also *Citizens United v. Federal Election Commission*, 558 U.S. 310, 338-39 (2010).

small groups that wish to speak about local politicians do not. Often, these small groups will decide that expressing their political opinion is not worth the bureaucratic headache.

When so much information produces so few results and so many problems, it is fair to ask whether these routine invasions of privacy actually produce better politics or better public understanding of the political process. Set aside scholarly studies for a moment and use the smell test: If disclosure laws are the key to holding politicians accountable, American politics should have improved significantly since we starting blanketing politics with these laws in the 1970s.

But are candidates running today better than they were a generation or two ago? Are politicians less corrupt? Is money less influential? Few would answer “yes” to any of these questions, yet the myth that disclosure is essential to good governance persists.

It is easy to see the appeal: In order for citizens to oversee their government, it must be transparent, and is disclosure of donors to political groups not just another form of transparency? Yet where government transparency allows citizens to keep tabs on their elected officials, donor disclosure allows the government to monitor its constituents. This distorted notion of transparency has generated an unworkable body of law that restricts First Amendment rights, deprives voters of valuable speech about candidates and public issues, and skews the political playing field in favor of the wealthy and well-connected.

### **More Regulation of Speech Not the Answer to Every Problem**

Despite the prodigious number of disclosure regulations on the books and the real harms that such laws inflict, government officials and self-styled campaign finance “reformers” continue to demand more and more information about citizens’ political affiliations and beliefs. Across the country, there are efforts to mandate disclosure of donors from social welfare groups and trade associations that do not primarily speak about politics.

In 2015, the Republican-controlled Montana Legislature passed a bill to do just that, which will ultimately lead to even more misguided regulations on political speech.<sup>23</sup> In California, Attorney General Kamala Harris (D) is demanding donor information from all nonprofits, including charities, that raise funds in the state, regardless of whether they do any political spending or whether there is any hint of wrongdoing. She refuses even to explain what purpose such disclosure serves but demands it nonetheless.

Harris claims the information would remain private, but given the experiences of the National Organization for Marriage and other conservative and Tea Party groups targeted by the IRS or local prosecutors in Wisconsin, conservatives have good reasons to be wary. The Center for Competitive Politics is challenging this latest assault on private giving and has brought the case to the U.S. Supreme Court.<sup>24</sup> At the same time, Citizens United is fighting similar demands from New York Attorney General Eric Schneiderman (D).<sup>25</sup>

But the fight will not end there. So long as those on the Left view campaign finance disclosure as the paragon of virtue and more regulation of speech as the answer to every problem, any organization that speaks or associates with politicians, politics, or public policy is at risk. Will publishing news articles, blogs, or editorials anonymously be the next target? What about universities that offer classes about political issues and keep their donors anonymous? What about churches where pastors and ministers express positions on social issues that might affect how citizens vote? Will privately donating to your church become an artifact of history?

In the face of such threats and proposals for more invasive disclosure regulations, we must never forget that all Americans have the right to support the causes in which they believe. But in order to facilitate such civic participation, we must protect citizens’ individual privacy and their ability to come together in support of one another. Doing so also requires that we protect the resources these groups need to make their voices heard.

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23. Charles S. Johnson, *Montana House Backs Bill to Require “Dark Money” Groups Disclose Donors*, MISSOULIAN (Mar. 26, 2015), [http://missoulian.com/news/state-and-regional/montana-house-backs-bill-to-require-dark-money-groups-disclose/article\\_72bd75d5-6371-5b6b-b1d7-026d09be7d9f.html](http://missoulian.com/news/state-and-regional/montana-house-backs-bill-to-require-dark-money-groups-disclose/article_72bd75d5-6371-5b6b-b1d7-026d09be7d9f.html).

24. Mark J. Fitzgibbons, *NAACP v. Alabama for the 21st Century*, WASH. EXAMINER (Sept. 1, 2015), <http://www.washingtonexaminer.com/naacp-v.-alabama-for-the-21st-century/article/2571155>.

25. Maggie Haberman, *Citizens United to Sue Over Donor Info*, POLITICO (May 21, 2014), <http://www.politico.com/story/2014/05/citizens-united-sue-eric-schneiderman-ny-attorney-general-david-bossie-donor-information-106953>.

It is time to recognize that excessive disclosure laws do more harm than good and violate Americans' fundamental rights to free political speech, association, and privacy. Vocal calls for more disclosure are not calls for transparency and good governance, despite their proponents' arguments to the contrary. Rather, they are attempts to increase the size and power of government and to enable activists to harass those with whom they disagree.

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