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Disclosing Disclosure: Lessons from a “Failed” Field Experiment

Abstract: In a recent issue of *The Forum*, Fortier and Malbin call for more research into the effects of disclosure requirements for campaign finance. In this paper, we report the results of a field experiment designed to assess whether such rules dissuade potential contributors due to privacy concerns. The paper is unique in that we explain why the field experiment never happened, and what we can learn from its “failure.” Specifically, we show that 2012 Congressional candidates were fearful about letting potential contributors know that their donations would be made available on the Internet, along with their address, employer, and other personal information. In trying to learn directly about whether contributors would be spooked by this knowledge, we ended up learning indirectly, through the actions of candidates, that privacy concerns may in fact limit participation in the political process, including among small donors.

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Introduction

Campaign finance disclosure has become a hot topic in the wake of the US Supreme Court’s 2010 *Citizens United* decision, which Senator John McCain called its “worst decision ever” (Robb 2012). In its ruling, the Court determined that corporations (and other groups) may spend money advocating the election or defeat of federal candidates, thereby overturning a long-standing federal ban on such activities. In the wake of this decision, many 501(c)(4) non-profit organizations engaged in election-related spending without disclosing donors, leading to calls for further regulation of these “dark money” groups (Schneiderman 2013). Mean-

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while, corporations have faced increasing pressure to disclose all of their political spending, and many members of Congress have called for additional disclosure of political spending by proposing legislation such as the 2013 DISCLOSE Act (H.R. 148, 113th Congress 2013).

The courts have laid out two types of justifications for requiring the disclosure of campaign contributions – an anti-corruption rationale and an informational rationale (see, e.g., *Buckley v. Valeo* 1976 and *Citizens United v. Federal Election Commission* 2010) – and have so far held that these justifications supercede concerns about the potential costs of disclosure in squelching political speech (e.g., *Citizens United* 2010). Such decisions have been made with little empirical guidance, particularly with respect to costs, though not because of willful ignorance. As Fortier and Malbin (2013, p. 473) note in an earlier issue of this journal, “... current research on disclosure is fairly sparse, pointing to contrary results. ... In light of the issue’s importance, therefore, it would be valuable to know at least the following: ... To what extent does disclosure deter potential individual and institutional donors from participating?”

Accordingly, in this paper we focus specifically on Fortier and Malbin’s call for more research on the costs associated with disclosure, and we report on our attempt to conduct a field experiment to assess whether campaign finance disclosure requirements dissuade potential contributors concerned about privacy. The sparse literature on this topic makes the paper unique, but so does our discussion of why the experiment never occurred and how this “failure” was, in spite of all, informative.

Set-Up

For our field experiment, we asked all candidates for the US House and Senate in 2012 to participate in a “disclose disclosure” field experiment to let prospective donors know that their personal information, including their name, address, occupation, and employer, is made available on the Internet. We would then use public records to determine whether this disclaimer led to fewer contributions to participating candidates compared to non-participating candidates (controlling for the lack of random candidate assignment) during the time period it appeared.

Campaigns for federal office must already inform potential contributors that they are required by law to “obtain and report” personal information (FEC 2011). Yet they do not typically inform contributors that this information (name, address, occupation, employer, and contribution amount) is then made public. This is not a distinction without a difference. For instance, an employer may inform an employee that his salary is reported to the government (i.e., the IRS). Of

course, from this notification, one cannot and would have no reason to infer that the IRS will then post the information on its website and permit anybody to create databases using that information, as is the case with campaign finance data.

The disclaimer in our experiment would have been posted on the donation portion of each campaign’s website. This had the potential to make our research unique in an additional way, particularly given Fortier and Malbin’s (2013) and Malbin’s (2013) call for research on the dynamics and demographics of internet donors. As the latter piece notes:

Elections in the US are financed for the most part by a tiny portion of the US population... In recent years a number of scholars and prominent actors in the political system have suggested that if a large enough number of citizens were to give smaller contributions to candidates and political parties, that could help counterbalance the role played by large donors and independent spenders. The vehicles most often suggested for accomplishing this are, first, to use modern communication technology to lower the barriers to participation ... (Malbin 2013, pp. 385–386).

By posting the disclaimer online, we would have had the ability to examine, at least to a certain degree, if awareness of disclosure might confound attempts to stimulate broader participation in the political system through donations via the Internet and other technology.

The field experiment never happened, however, because too few candidates agreed to participate. Our paper demonstrates that candidates’ revealed preference is for a system of disclosure where donors are not informed about how their information is used. Of the more than 1000 general election candidates we contacted, only 21 agreed to provide donors with greater disclosure information, and of these, all but one were non-incumbents. This attempted field experiment demonstrates the need for more work in the area of disclosure and shows how a “failure” in social science may nonetheless be informative.

Cost-Benefit Analysis in Campaign Finance Disclosure

For a century, the primary justification for campaign finance laws has centered on corruption concerns. These motivated the first state disclosure laws enacted at the end of the nineteenth century, followed by the first federal campaign finance measure – the Publicity of Political Contributions Act of 1910, which required post-election disclosure of donations to candidates for the House of Representatives (Briffault 2010). These early efforts set forth a principle that to this day

influences campaign finance: Participants should disclose where campaign contributions come from and how they are spent (Briffault 2010).

An emphasis on disclosure continued in the Corrupt Practices Act of 1925, which contained the first public mechanism for transparency in campaign finance as part of a comprehensive regulatory system (Ansolabehere 2007). Fifty years later, the Watergate scandal served as the catalyst for the Federal Election Campaign Act of 1974, the first administrative system for disclosure data, and the subsequent adoption of financial disclosure laws by every US state (Huckshorn 1985). Since then, the popularity of disclosure laws has steadily increased (Werfel 2008).

Briffault (2011) attributes the popularity of disclosure to the purported benefit of providing voters with relevant information without the Constitutional burdens associated with contribution restrictions. In *Buckley v. Valeo* (1976), the majority supported disclosure as consistent with the First Amendment and shifted the emphasis to the availability of public information, thus framing disclosure as pro-First Amendment. In keeping with this tradition, Justice Kennedy opined in *Citizens United*, “This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages” (*Citizens United* 2010).

Disclosure has been, until recently, a relatively uncontentious policy area inside and outside academia. For instance, Gross and Goidel (2003) view disclosure as the least controversial of campaign finance reforms. That said, its effectiveness is far from established. Malbin and Gais (1998) express disappointment in the success of state-level disclosure laws, calling them an “unfulfilled promise” (164), and Briffault (2011), Mayer (2010), and Schultz (2005) are all skeptical of whether disclosure laws can improve the democratic process.

Garrett and Smith (2005) argue that the goals of disclosure laws include minimizing actual and perceived corruption, facilitating enforcement of existing contribution limits, and enabling voters to evaluate candidates. Recently, social scientists have begun to investigate empirically whether disclosure laws are effective in achieving these and other goals. Primo and Milyo (2006) find that state-level disclosure laws enacted in the wake of *Buckley* had minimal effects on perceptions of government.

Moreover, these laws also appear to be largely ineffective in educating voters. Carpenter (2009) shows, consistent with Downs (1957), that voters are rationally ignorant with respect to disclosure data, and Carpenter (2009) and La Raja (2007) show that disclosure data are less prevalent in news reporting than is commonly thought. Primo (2013) uses a survey experiment to demonstrate, in the context of ballot measure elections, that the informational benefits of disclosure laws essentially disappear once the other information available to voters in a campaign is

accounted for. In other words, the marginal benefits of disclosure information are virtually nonexistent.

The costs of disclosure laws are thought to manifest themselves by dissuading participation in the political process in two areas: collective action and contribution decisions. With respect to the former, California’s Bipartisan Commission on the Political Reform Act of 1974 (2000) stated that disclosure laws have the potential to disenfranchise citizens due to three factors: a lack of understanding of how to comply with regulation, a lack of desire to incur the additional expenses necessary for compliance, and a concern that full compliance may never be possible, thus exposing non-compliant activists to potential liabilities.

Recent research shows that these fears are not unwarranted. Milyo (2007) asked 255 participants in an experiment to complete actual state disclosure forms for California, Colorado, or Missouri. The study participants finished correctly only 41% of the tasks involved and not a single one succeeded in completing the forms correctly.

With respect to contribution decisions, Carpenter (2009) identified a “disclosure for thee, not me” phenomenon. In a national survey, 82% of individuals appear to favor disclosure, as long as the disclosed information is not their personal information (e.g., their names, addresses, occupations, and employers). However, when disclosure is applied to them, 56% suddenly oppose the disclosure of name, address, and occupation, and 71% oppose the disclosure of their employer’s name.

Finally, Carpenter’s findings show that a majority of respondents would “think twice” before donating to a ballot issue campaign if their name and address would be disclosed afterwards, and a plurality would think twice before donating to a ballot issue campaign if their employer’s name were revealed. Fear of retribution motivates many of these responses.

La Raja (forthcoming) has since conducted a survey experiment and found additional evidence that disclosure dissuades contributions, especially among voters whose political views conflict with people they live with, work with, or are related to. Despite the progress that has been made to date, no research has demonstrated precisely how disclaimers alter behavior at the time of a contribution to an actual campaign. This is where our research comes in.

The Field Experiment

Under current law, an aggregate contribution of \$200 or more to a federal candidate must be disclosed along with the donor’s name, address, occupation,

and employer, in periodic reports filed with the Federal Election Commission (FEC 2011). These reports are available on the FEC website. In addition, the FEC website also contains a searchable database of contributors, from which personal information is readily obtainable, as well as an RSS feed of electronic filings. While third parties are prohibited from using this information to solicit contributions or for commercial purposes (FEC 2011), there is no restriction on creating databases from this information, and a plethora of third-party sites provide such information.

It takes seconds, for instance, to learn the names, address, and federal contribution behavior for employees of our universities by visiting www.campaign-money.com. Groups like the Sunlight Foundation have even created modules to help interested parties map the location of contributors and, through a tool called Inbox Influence, allow the user to turn his or her email inbox into a treasure trove of campaign finance data:

Inbox Influence provides details on any entity in the body of the email, plus information on both the sender of the email and the company from which it was sent. With it, you can even see how your friends and family have given to political campaigns. Perhaps Uncle Joe has more mainstream views after all?¹

In November of 2013, influence through disclosure took a new turn when the FEC agreed that data produced as part of disclosure could now be used to encourage donors to ask for refunds from candidates (Brusoe 2013). A nonprofit organization had requested to use the data to contact contributors and encourage them to request the return of their donations if candidates change their positions, engage in scandalous behavior, or conceivably do anything donors (or those fomenting return requests) find objectionable. The nonprofit planned to post data on how many people asked for refunds and the amount of money requested as a way to pressure politicians to comply with contributor's wishes. All of these websites, searches, and uses of data would be entirely legal.

Despite the widespread dissemination of this information, the FEC's "best efforts" standard only requires campaign contribution solicitations to include a statement of the following form:

Federal law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle (FEC 2011, p. 76).

¹ See <http://training.sunlightfoundation.com/module/mapping-campaign-finance-data/> and <https://inbox.influenceexplorer.com/>.

This statement is vague, as it does not indicate to whom the information is reported. Yet this lack of clarity creates an opportunity for social science research. By asking candidates to state explicitly that this information is reported to the government and placed on the Internet, our study would have examined the implications of broadening this disclaimer, building on existing understandings of the costs and benefits of disclosure laws.

To implement the research, we sent emails and letters to Congressional candidates in the 2012 general election, asking them to participate in a study in which the following disclaimer about disclosure would be posted on the contribution page of their campaign website for potential donors to see:

By making a donation, I understand that my name, the amount of my donation of \$200 or more, address, occupation and employer will be made publicly available, including in online searchable databases.

This disclaimer would be posted on campaign websites for a period of 2 weeks in September of 2012. We would then compare campaign receipts of participating and non-participating campaigns during this time period, controlling for factors such as the competitiveness of the contest. All candidates were offered confidentiality.² Although we attempted to include all candidates in each race, some had no reliable contact information for us to use for study invitations and were excluded. We also included only those who made it successfully past a primary race and into the general election. States with late primaries were excluded.

We sent two waves of emails, based on primary dates, and then mailed hard copy letters to campaigns that did not respond to emails. For campaigns that declined with an explanation, we logged the reason provided. For campaigns that declined without an explanation, we emailed back and asked for an explanation. Although we were unable to study the effects of disclosure awareness on contributors, the responses (or non-responses) of campaigns to our requests provided an informative look at how *candidates* may view disclosure. As such, one study failure produced another outcome that is interesting in and of itself.

Specifically, we examined what factors contributed to the likelihood of either (a) responding or, among those who responded, (b) agreeing to participate. These factors included party affiliation, incumbency status, district competitiveness, and vote share. Because we logged reasons given for declining participation, we

² Because too few campaigns agreed, we subsequently contacted those that agreed and told them the study would not run, and posting the disclaimer was not necessary for the purposes of the study.

were also able to look for patterns or themes in the reasons offered for not participating in the experiment.

Results

A breakdown of the sample by party, incumbency status, district competitiveness, and vote share can be found in Tables 1 and 2, with district competitiveness being defined as the negative of the absolute value difference between Barack Obama and John McCain's vote shares in the 2008 general election; less competitive

Table 1 Breakdown of the Field Experiment's Sample.

Variable	Entire Sample (N=1063)	No Reply (N=985)	Reply (N=78)	Reply Yes (N=21)	Reply No (N=57)
Incumbent	0.34	0.36	0.13	0.05	0.16
Democrat	0.39	0.39	0.32	0.29	0.33
Republican	0.38	0.40	0.22	0.05	0.28
Independent	0.22	0.21	0.45	0.67	0.37
Competitiveness	-22.04	-22.11	-21.08	-16.43	-22.79
Vote Share	40.28	41.49	25.12	13.20	29.51

Note: All variables are dummy variables except for Competitiveness, which is measured as the negative of the absolute value difference in vote share between Obama and McCain in the 2008 general election, and Vote Share, which is the vote share received by the candidate in the election. For three candidates, we found evidence that they ran as write-in candidates but could not obtain vote totals. These candidates are excluded from the vote share calculations.

Table 2 Breakdown of the Sample, Two-Party Candidates Only.

Variable	Entire Sample (N=819)	No Reply (N=777)	Reply (N=42)	Reply Yes (N=7)	Reply No (N=35)
Incumbent	0.44	0.45	0.24	0.14	0.26
Democrat	0.50	0.50	0.60	0.86	0.54
Republican	0.50	0.50	0.40	0.14	0.46
Competitiveness	-22.41	-22.46	-21.38	-19.43	-21.77
Vote Share	50.45	50.85	43.11	35.39	44.66

Note: All variables are dummy variables except for Competitiveness, which is measured as the negative of the absolute value difference in vote share between Obama and McCain in the 2008 general election, and Vote Share, which is the vote share received by the candidate in the election.

districts take on smaller values. These figures are based on the Daily Kos’s estimates of vote shares using the newly drawn district lines for 2012. State-level data (for US Senate races) is taken from <http://www.uselectionatlas.org>. Vote share is the share of the total vote received by the candidate and was obtained from <http://www.politico.com> and official election results.

Of the 1063 general candidates contacted, only 78, or 7%, responded to our request to participate in the campaign. Those who replied tended to be non-incumbents, independents, and ultimately had smaller vote shares, relative to the entire sample.³ Of the 78 candidates who responded, only 21 agreed to participate, or less than 2% of all campaigns.⁴ So, who are the 21 candidates who agreed to participate? Only one was an incumbent. (For confidentiality reasons, we will not say more about this individual.) Six were Democrats, and one was a Republican. Only one of the 21 candidates won his or her election. The average vote share of candidates who accepted was 13%.⁵

Overall, then, candidates with little chance of victory were the most likely to reply to and accept the invitation. These results are consistent with the idea that candidates are fearful that being truthful with contributors about disclosure will hurt campaign coffers. The explanations candidates offered for declining to participate in the field experiment reinforce the statistical results. Four distinct themes emerged from a qualitative analysis of the responses: (a) concerns about the chilling effects of disclosure, (b) prohibitive manpower burden, (c) technological constraints, and (d) disagreement with disclosure. Percentages below represent responses in which reasons other than a simple “no” were given. The percentages sum to more than 100 because some respondents gave reasons that fit into multiple categories.

³ A logistic regression of replying to the invitation on district competitiveness, along with dummies for incumbency, Democratic affiliation, and Republican affiliation, generates statistically significant effects on all variables except for competitiveness. Vote share is not included in the analysis because it is very highly correlated with independent party status and incumbency status. We do not report the results here for brevity and because the summary statistics tell a similar story far more simply. Results are available from the authors upon request.

⁴ One candidate responded with “maybe,” and he/she is treated as giving “no reply” for the purposes of what follows, where we categorize only “yes” and “no” as replies.

⁵ A logistic regression of accepting the invitation (coding non-responses and no answers as “no”) on district competitiveness along with dummies for incumbency, Democratic affiliation, and Republican affiliation, produced statistically significant effects on all variables except for competitiveness and, perhaps surprisingly, incumbency. This is most likely due to the interaction of the incumbency and Republican variables, both of which only have one “yes” value. If the Democratic and Republican party dummies are replaced with the a dummy for Independent party status, incumbency becomes statistically significant at the 0.10 level in a one-tailed test. Results are available from the authors upon request.

Concerns about the Chilling Effects of Disclosure

The results obtained from approximately 25% of respondents clearly identified concerns about the chilling effects of disclosure. Most of these respondents expressed fears about the potential adverse side effects of disclosure. As one candidate put it: “We are worried that including the excerpt may end up affecting us negatively. To avoid the small possibility of this happening, we will have to decline.” Another opposed “the idea of doing extra work that might dissuade some contributors.” Moreover, as the following response from a Democratic challenger illustrates, some campaigns were willing to leave their contributors potentially unaware of where their personal information would end up so as not to hurt their fundraising efforts:

Some people might have reservations before giving if the message is there. Although, by law, their information is available to the public, most people do not think about that fact when giving. We don't want to do anything that will make them think twice before giving.

Similarly, a Republican incumbent wrote:

I don't want [to] hurt donations to our campaign. If someone reads this on our website, they may not give. Even if some of our donors only give \$25, they would not cross the \$200 threshold requiring reporting, but they would be scared off by the other language.

Because many campaigns operate on shoestring budgets and rely heavily on volunteers, fundraising is always a chief concern for campaigns. One candidate's response to our request illustrates how threatening the disclaimer appeared:

It sounds like you are asking me to cut my own throat here and tell my contributors to give no more than \$200. I'm having enough trouble just getting \$5 out of them.

Even a candidate who initially agreed to post the disclaimer worried about its chilling effects. He called, preferring not to have anything in print, and confided to us: “I hope this does not hurt my donations. I wouldn't want this to spook any of our donors so that they would not contribute.” He ultimately declined to participate. Similarly, a candidate who agreed very late in the process to participate nevertheless recognized the disclaimer's potential chilling effects on donations, even though at no time did we explicitly tell campaigns what we intended to measure:

I'm terribly sorry that I didn't get around to agreeing sooner and that your experiment didn't get off the ground. It might have been interesting to see whether a disclosure worded that way might have affected donation sizes or amounts during the test period.

Prohibitive Manpower Burden

Approximately 21% of respondents identified the lack of time or personnel as their primary reasons for not participating. For example, one campaign said they “don’t have the resources to take lots of time” to participate in such a study. Similarly, others responded: “First race, No manpower;” “We are running a small grassroots campaign and our staff is all volunteer;” “I can’t be bothering a volunteer web-master to be changing text for a study;” and so forth.

Technological Constraints

Technological constraints precluded about 7% of the campaigns from participating in the study. Some replies were as simple as, “[W]e cannot fit all that on the google [sic] button,” while some indicated interest in the study even as they mentioned technological constraints: “While our candidate believes this research prompt is a great idea, we are unfortunately not at a point where we can manipulate our website to fulfill your request.”

Disagreement with Disclosure

About 14% of the campaigns providing reasons for not participating can be classified as disagreeing with disclosure and expressing general frustrations with the electoral process. One campaign, although agreeing to participate in the study, expressed concerns with placing the requested statement on the website out of concern for the safety of donors in a “police state.” The responses relevant to this theme alluded to disclosure supporting political practices of (a) both “Corrupt Democrat and Republican Parties,” (b) the “unconstitutional Federal Election Commission,” and (c) the “criminally corrupt Congress.” None of the respondents identified in this theme had intrinsic issues with the requested statement or the study, but all were categorically against disclosure, as clearly stated in the following response: “The reason we do not want to participate is we feel that identifying donor occupation and employer are not necessary to disclose.”

Other Refusals to Participate

Not all refusals to participate were substantive. About 32% of respondents claimed not to accept any contributions whatsoever, thus making the disclaimer – and their

involvement in a study – irrelevant. About 7% declined to participate because they already had an existing message on their website *similar* to what was requested by the study. We emphasize *similar* because existing messages did not fully capture the content of our disclaimer. Note the difference:

- Existing message: “Federal Law requires us to use our best efforts to collect and report the name, mailing address, occupation and name of employer of individuals whose contributions exceed \$200 in an election cycle” (FEC 2011, p. 76).
- Our disclaimer: “By making a donation, I understand that my name, the amount of my donation of \$200 or more, address, occupation and employer will be made publicly available, including in online searchable databases.”

Missing from the existing messages was a reference to what happens after the personal information is reported to the government – that is, being made publicly available online in searchable databases. We responded to these campaigns making them aware of the differences in the statements and asking them to reconsider participation, but none replied to our follow-up.

Conclusion

Although we are not able to discuss the effect of disclosure on decisions made by potential contributors, this paper has offered evidence that Congressional candidates, when given the opportunity to provide contributors with a more complete accounting of how their personal information is used, decline to do so. Some of these candidates explicitly raise the concern that knowing how their information is used may scare contributors off. This is telling, as it calls into question the idea that campaign finance disclosure is a costless policy.

Campaign concerns about the proposed disclaimer appearing on a donations webpage also raise questions about whether the potential costs of disclosure ought to be incorporated into future studies of how technology like the Internet affects political participation. The experience of recent campaigns demonstrates that modern technology can stimulate greater participation by citizens in the form of a broader contributor base (Malbin 2013), but, as we mention above, this same technology also has the capacity to enable greater disclosure awareness through vehicles such as Influence Inbox. If disclosure carries with it significant and practical costs, as some evidence suggests (Milyo 2007; Carpenter 2009; La Raja Forthcoming), it may force campaign scholars, practitioners, and pundits to ask which they want more – broader citizen participation or greater awareness of who contributes.

This paper also illustrates the principle that “failures” in social science may nonetheless be valuable and informative. A field experiment that never gets off the

ground may help us understand the world, just as null results in statistics, which also face an uphill battle in academic publishing, are often useful. Indeed, the fact that the study did not run provides useful information about similar research going forward. Simply put, we know better what not to do, or at least how not to do it. If we seek to know directly how contributors respond to disclosure requirements, soliciting the assistance of campaigns will likely not be fruitful.

This does not mean, however, that candidate responses to or views of disclosure regimes are a valueless enterprise. Candidates, and those who work in their campaigns, know intimately (perhaps painfully) what compels contributors to donate and what “spooks” them. As we seek, according to Fortier and Malbin (2013, p. 473), to know “[t]o what extent ... disclosure deter[s] potential individual and institutional donors from participating,” these results suggest candidate views or actions should not be overlooked.

Of course, a critic may say that our study was poorly designed because risk-averse Congressional candidates are naturally going to avoid doing anything risky in the middle of a campaign. But that is exactly the point: If disclosure is cost-free, then changing the disclaimer should be of no consequence. That most candidates ignored our request, or rejected it outright, is itself a noteworthy finding about disclosure.

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