Disclosure Costs

Unintended Consequences of Campaign Finance Reform

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Institute for Justice
March 2007

Family PAC v. McKenna, No. 10-35832 archived on January 9, 2012

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Executive Summary

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This study examines the impact of one of the most common features of campaign finance regulations: mandatory disclosure of contributions and contributors' personal information. While scholars have looked at the effects of other kinds of campaign finance regulations, such as contribution and spending limits and public financing of campaigns, very little work has examined the impact of disclosure, particularly as it relates to citizen participation in politics.

Indeed, both proponents and opponents of increased campaign regulations often simply assume that mandatory disclosure is a benign regulation that shines light on valuable information without any real costs. But, as we find, there are consequences, and they may in fact be quite costly to privacy and First Amendment rights while yielding little, if any, benefit in return.

This study focuses on *ballot issue elections*, not candidate elections. In 24 states, citizens can vote directly on laws and amendments, and all 24 states require the public disclosure of contributions after minimal contribution thresholds are met. The result is that individual contributors, even those who give very modest amounts to support a cause they believe in, will often find their contribution, name, address and even employer's name posted on a state website.

The rationale for disclosure in candidate elections is to prevent corruption, but that reasoning disappears with ballot issues where there is no candidate to corrupt. In this context, what

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purpose does disclosure serve?

To find out, we commissioned a public opinion survey in six states with ballot issues. We found that mandatory disclosure appears to enjoy support among citizens—until the disclosed information includes their own personal information—"disclosure for thee, but not for me":

· *More than 56 percent of respondents opposed disclosure when it includes their name, address and contribution amount.*

· *Opposition rose to more than 71 percent when an employer's name must be disclosed.*

This opposition translates into a lower likelihood of becoming involved in political activity through donations, meaning that mandatory disclosure "chills" citizens' speech and association:

· *A majority of respondents would think twice before donating to a ballot issue campaign if their name, address and contribution amount were disclosed.*

· *An overwhelming plurality would think twice before donating to a ballot issue campaign if their employer's name were revealed.*

When asked why they would think twice, respondents cited, among other things, privacy and safety concerns, fear of retribution, and the revelation of their secret vote.

Not only are there serious costs associated with disclosure, it's a regulation devoid of the benefits typically touted by proponents, namely "better," more informed voters:

· *A little more than a third of respondents knew where to access lists of campaign contributors or took the time to read such information before voting. Therefore, citizens appear to know nothing about a law they strongly support and appear uninterested in accessing the information it produces.*

Instead, we propose a system of voluntary disclosure in which campaigns and contributors weigh the costs and benefits of disclosing key information. In this way, campaigns and citizens retain their rights to free speech and association without onerous government intervention—and without the invasion of privacy that comes from the government posting personal information on the Internet as a condition of political participation.

Introduction

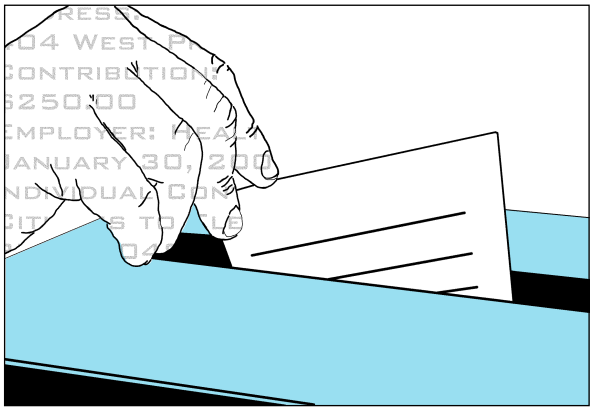
Campaign finance restrictions remain some of the most controversial First Amendment issues in the nation. On the heels of the Watergate scandal, campaign finance laws at both the state and federal levels drew much attention.[1] In 1974 alone, 24 states adopted campaign finance reform laws, and by 1984 every state had some form of campaign finance regulation. Although the typical provisions involved monetary limitations of various types and sizes,[2] broader reform efforts included public financing and, the subject of this report, financial disclosure.[3]

Often these reforms are discussed in the context of candidate elections, but campaigns related to ballot initiatives also fall under finance laws, including disclosure. In fact, disclosure laws for ballot initiatives first appeared in the opening decades of the past century.[4] A ballot initiative or referendum is a form of direct democracy, in that citizens in a state vote directly on proposed laws rather than relying on elected representatives in the legislature.[5] Currently, 24 states allow citizens to make or alter policy through initiatives, also called propositions, questions or issues.[6]

In recent decades, the number of citizen initiatives in these states has increased dramatically.[7] The subject matter of initiatives also varies widely. In the 1990s alone, citizens voted on initiatives concerning English as the official language, affirmative action, euthanasia, legalization of marijuana, term limits, crime victims' rights, abortion and parental notification, environmental regulation, gambling, child pornography, tax limitation, campaign finance reform, health care reform, insurance reform, welfare reform, immigration, housing, tort reform and stadium and road construction.[8]

As the number of initiatives has grown, so too has the amount of money spent in the campaigns. Although spending on initiatives remained somewhat static into the 1980s, the past two decades have witnessed an increase in spending on ballot initiatives that sometimes surpasses amounts dedicated to candidate elections.[10] In the face of such spending, reformers called for changes to existing or the creation of new campaign finance laws for ballot initiatives.

One of the central features of such laws is



public disclosure. In fact, in the world of campaign finance regulation, disclosure represents one of the most common features of all state reform efforts.[11] All 24 states with ballot initiatives require disclosure to the government of contributors' personal information after minimal contribution

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thresholds are met. In the name of transparency and access to information, these laws require initiative committees to collect and report personal information about contributors, including names, addresses, contribution amounts and, in 19 states, even employers and/or occupation.[12] Issue committees also must often report all expenditures, from the routine, such as political consultants and advertising, to the minutia, such as yard signs and supplies for lemonade stands.[13] These reports are then made available to the public, often on state websites.

The justifications for such laws are simple. First, (according to proponents) because money corrupts politics, all contributions and expenditures should be made public to keep the process "clean."[14] Such support for disclosure began early in the last century. For example, the 1928 Republican Party Platform stated: "The improper use of money in governmental and political affairs is a great national evil. One of the most effective remedies for this abuse is publicity in all matters touching campaign contributions and expenditures."[15]

Such sentiments continue today. One proponent decries the "corrupt campaign finance system,"[16] while others point to the undue influence that special interests, "big business" and campaign consulting firms have on the initiative process.[17] According to some campaign finance scholars, forced disclosure addresses these problems.[18]

Second, under the banner of "more is better," proponents claim that information on contributions will further assist rational voters in deciding how to vote.[19] A fairly widely held view among political scientists is the notion that voters are cognitively limited decision makers, processing only a small fraction of the information to which they are exposed.[20] Rather than engaging in a comprehensive information search and then deliberating to achieve an optimal choice, the argument goes, individuals tend to rely on cues to make judgments.

These cues take several different forms, including expert and celebrity opinion,[21] media messages,[22] and, most relevant to this study, groups that oppose or support initiative campaigns.[23] According to some proponents, without such information journalists, scholars, regulators and voters cannot uncover the economic interests behind a campaign, information that proves important for voters.[24] Yet, there is little evidence that disclosure is effective.[25] Recent research indicates voters are no more trusting of the political process and no better informed as a result of disclosure.[26] Moreover, the benefits of disclosure also require an electorate that both knows such information is available and accesses it in the decision-making process.[27] Since the advent of these campaign finance laws, there is little evidence indicating either as they relate to ballot initiatives.

Recent research indicates voters are no more trusting of the political process and no better informed as a result of disclosure.

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In fact, some scholars call the expectation that voters will access disclosure records "absurd."[28]

Low voter access of disclosure information is consistent with low levels of voter knowledge and access to information generally. Although "headline" initiatives, such as those dealing with moral issues or gun laws, can achieve fairly high voter awareness, many receive little voter attention.[29] Moreover, most of those who sign ballot initiative petitions know nothing about the actual contents or implications.[30] And when confronted by the actual ballot language, many are confounded over its meaning or fatigued over the length of descriptions or number of initiatives on the ballot.[31]

Such issues are particularly important given the potential costs associated with campaign finance laws. Indeed, more than 30 years ago political scientist Herbert Alexander warned against the "chilling effect" of such laws on free speech and citizen participation.[32] Alexander described a situation in which citizens might be reluctant to participate or speak for fear of unintentionally violating laws they knew little about or did not understand. Applied to disclosure, speech and association could also be "chilled" by limiting the involvement (through contributions) of citizens averse to revealing their personal information out of privacy concerns or conceivably the revelation of their secret ballot. Brad Smith, former chair of the Federal Election Commission and current chair of the Center for Competitive Politics, also points to the not unheard of possibility of retaliation against citizens whose political activities are disclosed to the public by the state. Smith asks, "What is forced disclosure but a state-maintained database on citizen political activity?"[33] Thus, the costs of forced disclosure in burdening privacy and First Amendment rights may outweigh any benefits.

"What is forced disclosure but a state-maintained database on citizen political activity?"

Unfortunately, the effects and effectiveness of disclosure laws related to ballot issues remains an area rife with opinions, assumptions and assertions but too little research. Indeed, the literature on campaign finance and disclosure overwhelmingly focuses on candidate elections while largely ignoring ballot issues or assuming the dynamics are the same. According to one campaign finance expert, this dearth of research is problematic: "It is difficult to evaluate the desirability of either current laws or proposed reforms when the potential costs of various policies have been completely ignored by scholars and policy makers alike."[34]

Therefore, we undertook this research to examine some of the assumptions inherent in discussions of campaign finance disclosure laws as they relate to ballot issues. Specifically, we tested the theory that mandatory disclosure contributes to "better" (i.e., more informed) voters by examining voters' knowledge of ballot initiatives and disclosure, their access of contributor information and the sources of information typically utilized

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by voters in decision making. We also studied the idea of the "chilling" nature of disclosure. That is, we sought to determine if voters are less likely to support initiative campaigns in the face of mandatory disclosure.

To do so, we completed an opinion and knowledge telephone survey of citizens in six states: California, Colorado, Florida, Massachusetts, Ohio and Washington. The states were chosen for geographic and ideological diversity. Citizens in all six states voted on ballot issues in the November 2006 election, and all six states require disclosure of issue campaign contributors. In all states, the disclosed information includes a contributor's name, address, contribution amount and name of employer after minimal threshold amounts are met, and all six states publish the lists of contributors on a state website. The sample included 2,221 respondents proportionately stratified by state—a particularly robust sample size for survey research of this type. (See the appendix for more detail on the methods used.)

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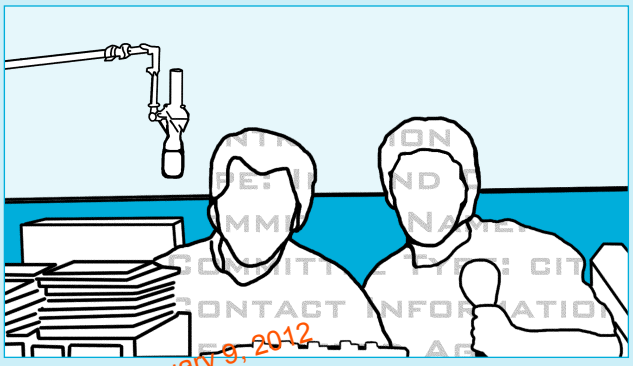
Abuse of Disclosure Stops the Presses

Abuse of mandatory disclosure laws can even threaten freedom of the press—as Kirby Wilbur and John Carlson discovered.



Wilbur and Carlson, talk radio hosts on Seattle's KVI 570 AM, are paid to talk politics. Outraged about a new gas tax, the pair urged listeners to sign a petition to repeal it. They debated the issue on the air. They provided regular updates on the status of the campaign and encouraged people to donate money to an issue committee, No New Gas Tax.

But that committee found itself the subject of litigation due to Wilbur and Carlson's on-air support. Various cities that stood to benefit from the gas tax filed a campaign finance complaint. They took Washington's mandatory disclosure law an odd step further than most, claiming that on-air talk should have been disclosed as "in-kind" contributions from the radio station to the No New Gas Tax Committee.

If the hosts' speech indeed constituted reportable "contributions," then contribution caps that kick in a few weeks prior to the election would have forced Wilbur and Carlson to stop talking about the issue for fear of exceeding the caps and prompting sanctions against the campaign.

Mandatory disclosure is intended to provide more information about those who support or oppose ballot issues, but the radio hosts' positions on the issue couldn't have been more transparent—they were broadcasting their views over the public airwaves.

Instead of providing voters more information, Washington's disclosure law was used to intimidate a campaign and nearly silence the media through litigation.

Support for Disclosure: For Thee, But Not for Me

As statement 1 in Table 1 indicates, mandatory disclosure of contributors to issue campaigns enjoys strong support among citizens in these six states. More than 82 percent of respondents agreed or strongly agreed with the idea. Statements 2 and 3 further illustrate why disclosure appears to enjoy strong support. More than 70 percent of citizens find organizational support or opposition to an issue influential, and more than half report the same dynamic as it applies to individuals who support or oppose issues. Consistent with some aforementioned scholars,[35] voters claim to find such disclosed information important in deciding how to vote.

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Table 1 Support for Disclosure

Survey Question	Agree	Disagree	*Average Response**	*Standard Deviation*	%Margin of Error**
1. The government should require that the identities of those who contribute to ballot issue campaigns should be available to the public.	82.3%	15.4%	1.59	.96	±1.50
2. It would change my opinion about a ballot issue if I knew which well-known organizations contributed money to ballot issue campaigns.	71.2%	25.9%	1.95	1.08	±1.81
3. It would change my opinion about a ballot issue if I read the list of individuals in my state who contributed to issue campaigns.	52.5%	42.7%	2.45	1.12	±2.02
4. If I contribute money to a ballot issue campaign, I believe my name, address, and contribution amount should be posted on the Internet by the state.	40.3%	56.4%	2.75	1.19	±2.02
5. If I contribute money to a ballot issue campaign, I believe my employer's name should be posted on the Internet by the state.	24.1%	71.4%	3.17	1.10	±1.77
6. If by contributing to a ballot issue campaign my name and address were released to the public by the state, I would think twice before donating money.	59.7%	36.6%	2.16	1.19	±1.98
7. If by contributing to a ballot issue campaign my employer's name were released to the public by the state, I would think twice before donating money.	48.9%	43.7%	2.58	1.38	±2.00

* Participants responded to a 4-point scale: 1=Strongly Agree; 2=Somewhat Agree; 3=Somewhat Disagree; 4=Strongly Disagree
**95% confidence interval

Yet, support for disclosure wanes considerably when the issue is personalized. As results for statement 4 illustrate, more than 56 percent disagreed or strongly disagreed that their identity should be disclosed, and the number grew to more than 71 percent when disclosure of their personal information included their employer's name (statement 5). Such findings begin to point to a stark inconsistency in support for mandatory disclosure. Indeed, when we compared respondents' support for disclosure generally to their support for disclosing their own personal information, we found a very weak statistical relationship, especially if disclosure of one's employer is required.[36] In other words, enthusiastic support for disclosure laws does not translate into a belief that one's own personal information should be released publicly.

Enthusiastic support for disclosure laws does not translate into a belief that one's own personal information should be released publicly.

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When participants are asked about their likelihood of contributing to a campaign in the face of disclosure, almost 60 percent would think twice about contributing when their personal information is disclosed (statement 6), and the number approaches 50 percent upon disclosure of their employer's name (statement 7). Comparing respondents' support for disclosure laws to their likelihood of contributing to a campaign if their personal information is made public, we found an even weaker statistical relationship.[37] This indicates that even those who strongly support forced disclosure laws will be less likely to contribute to an issue campaign if their contribution and personal information will be made public.

When asked, through open-ended probes, why they would think twice if their personal information was disclosed, the reason most often given (54 percent) was a desire to keep their contribution anonymous. Responses such as, "Because I do not think it is anybody's business what I donate and who I give it to," and, "I would not want my name associated with any effort. I would like to remain anonymous," typified this group of responses. Respondents also frequently mentioned a concern for their personal safety or the potential for identity theft. Comments included, "Because I am a female and [it's] risky having that info out there"; "With identity theft I don't want my name out there"; and "I wouldn't donate money because with all the crazy people out there, I would be frightened if my name and address were put out there to the public."

Other participants saw a relationship between disclosure and a violation of their private vote with responses like, "I don't want other people to know how I'm voting," or, "Because that removes privacy from voting. We are insured privacy and the freedom to vote." Still others noted the opportunity for repercussions. "I think it's an opening for harassment"; "I don't think

my information should be out there for fear of retaliations"; or "My privacy would be invaded by the opposition," illustrate such concerns.

Respondents also most often cited the issue of anonymity (32 percent) when asked why they would think twice before donating if their *employer's* name were disclosed. In this case, the concern was over revealing where they work. For example, "It's not anybody's business who my employer is and it has nothing to do with my vote," or, "My employer's name is nobody's business," most often represented this concern.

Respondents also often cited concern for the longevity of their job should their employer, through mandatory disclosure, learn of the employee's beliefs expressed through a contribution. Some simply stated, "I would never want my employer to know who I give money to," or, "I wouldn't want my employer to be informed on what I do." But others explicitly stated their fear: "Because that could jeopardize my job"; "I might get fired for that kind of stuff"; and, "If you were a union member and you vote on another side it would come back at you and hit you in the face."

"Because that removes privacy from voting. We are insured privacy and the freedom to vote."

On the flip-side, others thought mandatory disclosure of the employer's name might misrepresent an employer, with comments such as:

"It is my choice, not my employer."

"I don't think it is appropriate for my employer's name to be given out related to what I do."

"Because I don't know if he wants his name put out there."

"Because it's a violation of the employer's privacy."

"I don't want to involve my boss involuntarily."

Still others feared for the negative effect on their own business: "I am self-employed, and I wouldn't want that to be released to the public," or, "Because I own a business and who I support is part of my own internal business practices and should not be public."

These results address not only a belief (or lack thereof) in disclosure, but also touch upon political involvement. That is, requiring the disclosure of citizens' identities, personal information and employers' names appears to foment reluctance to "speak" or "associate" during the political process as it relates to ballot issue campaigns.

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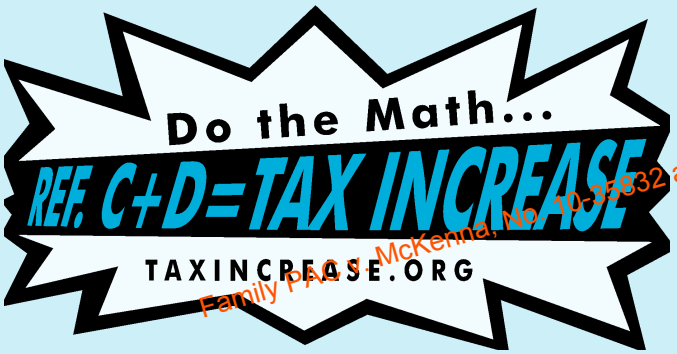
Mandatory Disclosure Can Lead to Less Information for Voters

Instead of spending time informing voters about issues, policy groups—like the Independence Institute—are increasingly stuck in disclosure's red tape.

The Independence Institute is a non-profit dedicated to educating Coloradoans about the benefits of free markets and limited government. There are similar groups from all across the ideological spectrum, but they all have one thing in common: They speak out to urge policy and political change.

When the Independence Institute ran a series of radio ads criticizing two tax referenda in Colorado, it was sued by a proponent of the referenda who claimed it was required to register as an "issue committee" under the state's campaign finance laws. But complying with the full panoply of campaign finance regulations is unduly burdensome for small non-profit organizations like the Independence Institute.



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First, the organization must register with the government each time it decides to speak out on a ballot issue. Next, it has to open separate bank accounts. Then, someone must determine what portion of salaries, benefits and overhead to allocate to each issue. Numerous disclosure reports and more paperwork follow.

Then the organization must disclose its entire donor list to the government, even though many donors prefer to remain anonymous. Not everyone who supports a political idea wants to register his or her position with the government. In a famous example, members of the NAACP objected to having their names disclosed during the civil rights movement, in part for fear of retribution.

Faced with such administrative burdens and concerns about respecting donor privacy, policy groups may be tempted to self-censor on subsequent ballot issues. As a result, voters receive less information about important issues because fewer groups are willing to bear the costs of speaking out.

Limited Information: Knowledge and Use of Disclosure

As several scholars assert, the benefit of disclosure—more information for voters—require an electorate that both knows such information is available and accesses it in the decision-making process,[38] but as the results in Table 2 indicate, neither of these are true for the majority of citizens. Less than half of respondents reported being informed about laws governing contributions to issue campaigns (statement 1). Not surprisingly, barely more than a third also knew where to access lists of campaign contributors (statement 2) or, consequently, read such lists before voting (statement 3). Again, these results reveal inconsistencies in attitudes about disclosure. When we compared support for general disclosure to knowledge of disclosure laws, knowledge of where to find contributors' information, and actual access of those lists, we found practically no statistical relationships.[39] Therefore, citizens appear to know nothing about a law they strongly support and appear uninterested in accessing the information it produces.

Although few citizens report actively seeking out information about contributors, the vast majority report seeking out descriptions of and opinion about ballot issues before voting. Indeed, more than 90 percent of respondents agreed or strongly agreed that they actively seek out information about ballot issues (margin of error ±1.25 percent). Yet when survey participants were asked to name a ballot issue in the forthcoming election, 42 percent of the respondents could not name even one ballot issue.

Respondents who could, and did, name at least one ballot issue were also asked if they sought out information about contributors to the ballot issue they identified as foremost on their mind. As question 1 in Table 3 indicates, almost 72 percent responded "no." Similarly, the majority of those who named a ballot issue lack awareness about specific funders of campaigns devoted to their foremost issue (questions 2 and 3). Only 58 percent of respondents could name a ballot issue and most of those could not name any specific

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Table 2 Knowledge and Use of Disclosure Information

Survey Question	Agree	Disagree	Average Response*	Standard Deviation	%Margin of Error**
1. I am informed about the laws governing contributions to ballot issue campaigns in the state.	45.5%	49.5%	2.63	1.10	±2.02
2. I know where to access lists of those who contribute to ballot issue campaigns in my state.	34.6%	60.1%	2.89	1.15	±1.95
3. Before I vote on ballot issues, I usually check out the list of contributors to the respective campaigns.	37.7%	59.3%	2.81	1.14	±2.00

* Participants responded to a 4-point scale: 1=Strongly Agree; 2=Somewhat Agree; 3=Somewhat Disagree; 4=Strongly Disagree
**95% confidence interval

funders. Thus, it appears that an overwhelming majority of respondents—about three quarters—could not name any specific funders of issue campaigns in their states. This confirms that most citizens do not use or access the information disclosure provides.

When asked if they knew who generally supported or opposed their foremost issue, the majority still said no (questions 4 and 5), but the percentages were smaller than those for questions about specific funders. While most respondents are not aware of who specifically backs campaigns, they are slightly more aware of who generally supports or opposes an issue. The context for this difference appears to come from the results in Figure 1.

When asked, "Where do you get most of your information about ballot issues?" nearly two-thirds cited traditional forms of media, including newspaper, television and radio. Given the abbreviated information typically referenced in media reports, it seems quite logical that more voters would be able to identify those who generally take a position on an issue as compared to specific funders of issue campaigns.

Figure 1 Sources of Information Most Accessed by Voters on Ballot Issues

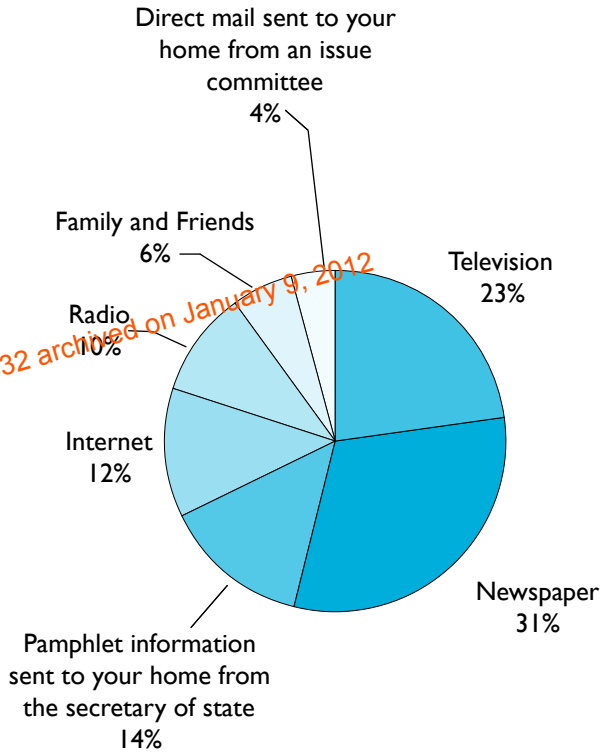

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Table 3 Knowledge of Ballot Issues and Supporters Among Respondents Who Named a Ballot Issue

Survey Question	Yes	No	%Margin of Error*
1. Did you seek out information about contributors to the campaigns of this ballot issue or not?	26.7%	71.9%	2.42
2. And are you aware of the specific funders of campaigns that supported your top-most ballot issue, or are you not aware of any?	41.0%	56.6%	2.68
3. And are you aware of the specific funders of campaigns that opposed your top-most ballot issue, or are you not aware of any?	41.6%	56.4%	2.68
4. And other than specific funders, do you know of any organization or individuals who generally support your top-most ballot issue, or do you not know of any?	46.1%	50.5%	2.69
5. And other than specific funders, do you know of any organization or individuals who generally oppose your top-most ballot issue, or are you not aware of any?	44.6%	53.3%	2.71

*95% confidence interval

Discussion and Conclusion

We undertook this research to examine some of the assumptions inherent in discussions of campaign finance disclosure laws as they relate to ballot issues. Specifically, we tested the theory that mandatory disclosure contributes to "better" or more informed voters by examining citizens' knowledge of ballot initiatives and disclosure, their access of contributor information and the sources of information typically utilized by voters in decision making. We also sought to understand better the "chilling" nature of disclosure. That is, we examined citizens' reported likelihood of supporting initiative campaigns in the face of mandatory disclosure.

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Results reveal some striking inconsistencies. First, while voters appear to like the idea of disclosure in the abstract (that is, as it applies to someone else), their support weakens dramatically in the concrete (that is, when it involves them). Stated succinctly, it is "disclosure for thee, but not for me." When applied to them, respondents cited several reasons for disliking disclosure. Some were predictable, such as privacy and anonymity, but others addressed a fear of harassment or negative repercussions, particularly in their place of employment. Still others saw disclosure of their personal information related to a ballot issue as a public proclamation of their secret vote, required and facilitated by the state. Conceptualized in the first person, respondents plainly identified significant costs associated with disclosure.

But the potential costs do not end there. Most respondents also reported themselves less likely to contribute to an issue campaign if their personal information was disclosed, the latter of which is the case in every state that allows ballot initiatives. Thus, the cost of disclosure also seems to include a chilling effect on political speech and association as it relates to ballot issue campaigns. Of course, one might argue that the costs are "worth it" to make for "better voters." But results herein challenge the notion of more informed voters through mandatory disclosure.

The vast majority of respondents possessed no idea where to access lists of contributors and never actively seek out such information before they vote. At best, some learn of contributors through passive information sources, such as traditional media, but even then only a minority of survey participants could identify *specific* funders of campaigns related to the ballot issue foremost in their mind. And only slightly more could name individuals or organizations who *generally* take a position on a ballot issue. Such results hardly point to a more informed electorate as a result of mandatory disclosure, despite the importance proponents assert.[40] And given the potential costs identified in this study, mandatory disclosure on ballot issues is a public policy worthy of more critical attention and debate than it currently receives.

Conceptualized in the first person, respondents plainly identified significant costs associated with disclosure.

Included in that debate should be the notion of completely abandoning mandatory disclosure on ballot issues. Note that this does not mean doing away with disclosure altogether. Instead, campaigns may voluntarily disclose their contributor lists, and contributors may voluntarily disclose their support. Or, some campaigns might choose to disclose large, corporate, or institutional donors, but not smaller or individual donors. To some, the idea may seem ridiculously simplistic: Given the option, who would disclose?

In a voluntary system, campaigns and contributors can freely weigh the real costs and benefits of disclosure and anonymity without the heavy hand of government.

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But with the symbolic power of labels like "culture of corruption,"[41] disclosure can be an influential tool in the campaign process. For example, if a campaign elects not to disclose, it runs the risk of looking as if it has something to hide, particularly if opposing campaigns choose to disclose. The act of not disclosing then becomes a liability for one and an instrument of influence for the other. And if both campaigns voluntarily disclose, the result is the same as that created by current policy without the intervention of the state.

Another option could be anonymous contributions in either voluntary or mandatory disclosure, whereby contributors donate money to an issue campaign but request that their identity remain anonymous when the campaign discloses its contributor list.[42] At first glance, the idea seems pointless. Anonymous contributors hardly fulfill the role of transparency, and the pressure on issue committees to run a "clean" campaign theoretically created by disclosure seems to lose its salience.

Yet, as with option one, campaigns would likely think twice about the symbolic effects of releasing disclosure lists loaded up with numerous anonymous contributors, particularly if, again, the opposition discloses comparably few, if any, anonymous donations. And if the anonymous donations are large dollar amounts, the symbolic effects are further heightened. As these results indicate, this option might enjoy wide support given the general popularity of disclosure among voters but clear disapproval of the revelation of their own personal information.

These multiple options also point to a diverse system of voluntary disclosure in ballot issue campaigns that manifests the authentic right of free association of citizens, rather than a government-imposed, cost-laden scheme of mandatory disclosure under a constructed notion of "right to know" and empirically unsupported attempts to make "clean elections." In a voluntary system, campaigns and contributors can freely weigh the real costs and benefits of disclosure and anonymity (and variations therein), without the heavy hand of government.

Finally, discussions about campaign finance that would consider voluntary, rather than mandatory disclosure, are not mere academic

exercises. As of this writing, campaign finance and disclosure in the ballot initiative context are at the center of at least three court cases that impact the free speech rights of ordinary citizens, non-profit groups and even members of the media, two in Colorado and one in Washington state.[43] As these cases illustrate, the effects of policies that seem positive on the surface and largely devoid of costs, are, in fact, "not so simple," as one editorial concluded.[44]

"It is all too normal for legislators to pass laws, accept praise, and then not worry about implementation. In a field such as campaign finance…this is particularly foolish," wrote one campaign finance scholar. "A poorly implemented law in this field may as well be no law at all."[45] When it comes to such fundamental rights as free speech and association, no law at all related to disclosure may be an important improvement over current public policy.

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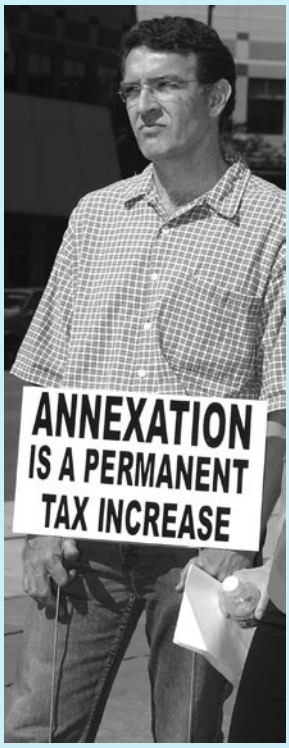
Neighbors Nearly Silenced in Parker North, Colorado

When Karen Sampson and her neighbors decided to oppose the annexation of their neighborhood of about 300 homes to a nearby town, they made yard signs, drafted some flyers, and hoped to debate the issue with proponents. These simple actions put them on the receiving end of a lawsuit.

In Colorado, when two or more people want to support or oppose a ballot issue and they spend at least $200 doing so, they must register with the government and report all money contributed to and spent on their efforts, as well as the identities of all contributors. The small group of neighbors opposed to annexation knew nothing about this requirement until after they were sued—by pro-annexation neighbors—for failing to comply with the law.



So Karen and her neighbors were forced to register with the government as an "issue committee." Trying to figure out the complex disclosure laws took them almost as much time and effort as they planned to spend speaking out on annexation. And even one inadvertent error on the state's complicated disclosure forms could invite more litigation.

In theory, the law aids transparency and provides information to voters, but in this case it was, at best, superfluous. Those opposed to annexation posted yard signs and openly spoke against the measure in order to convince fellow citizens. The actual effect of the law in Parker North was to inhibit citizens from speaking neighbor to neighbor. Indeed, the next time Karen and her neighbors want to talk politics, they will think twice for fear of being sued again for violating the state's campaign finance laws.

Appendix: Notes on Methodology

Sample

Survey respondents were contacted via random digit dialing. All participants were at least 18 years of age and screened into the sample using the "youngest male/oldest female" method. In this screening method, when someone answers the phone, the interviewer asks to speak with either the youngest male or the oldest female at home at the time. This is a standard practice within the survey industry, and yields the greatest diversity of gender and age participants in the sample. Table A1 includes descriptive statistics on the respondents' demographic characteristics.

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Table A1 Sample Demographic Descriptive Statistics

Education	%	Race/Ethnicity	%	Sex	%
Some high school	3.1	White	74.2	Male	48.6
High school grad	21.5	Black	8.8	Female	51.4
Some college	23.6	Asian	5.0		M(SD)
College graduate	29.1	Native American	3.1	Age	45.35(19.27)
Some graduate courses	2.6	Other	4.2		
Graduate/professional degree	18.9	Hispanic	14.0		

Given the sampling design, results were analyzed using weights. Weighting would not be necessary if this was a true simple random sample and, therefore, representative of the entire population under consideration. Although we begin with randomly generated telephone numbers, our sample falls short of true randomness largely because some demographic groups are easier to reach over the phone than others.

For example, the male to female proportion in the sample is not identical to the proportion of males to females in the population. The same is true for age groups: Older people tend to be over-sampled. Such disproportions could create a biased sample and somewhat spurious results. The standard and accepted procedure is to apply weights to the results to match the estimates provided by the U.S. Census for gender, age, race and geographic classification, all of which was done herein.

Survey

The survey used in this research was a 31-question instrument I developed and collaboratively refined with the polling firm responsible for collecting the data. Eleven of the questions were posed as statements to which participants responded along a four-point Likert-type scale,

where 1 was strongly agree and 4 was strongly disagree. Two of these questions included open-ended probes.

Six other closed-ended questions allowed for yes/no responses and dealt specifically with participants' knowledge of groups or individuals that supported or opposed ballot issues. Several open-ended questions probed participants' knowledge of specific issues in their respective states, and a final closed-ended question measured participants' sources of ballot issue information. In addition to the demographics above, respondents also were asked about their likelihood to vote and if they contributed or participated in a ballot issue campaign.

A draft of the survey was piloted with a small sample of respondents to measure question clarity and survey length. Minor changes were made to some question wording before data collection. The survey took approximately five to ten minutes to complete by phone, depending on respondents' answers to open-ended questions.

Procedures

Data collection was completed by TechnoMetrica, a New Jersey-based national polling firm that, among other things, operates as the official polling company for *Investor's Business Daily*. They also maintain a tracking poll of presidential approval and leadership cited regularly throughout the media, and their index of consumer sentiment is regarded in the investment community as the most accurate and timely in the industry. All data were collected during the final two weeks preceding the November 2006 election. As campaign scholars have noted, the two weeks prior to an election represent the period during which voters are most attuned to campaign issues.[46] Thus, this is the time participants responding to questions about ballot issues and campaign finance would be expected to be most knowledgeable and aware. This is particularly important to bear in mind when considering results of questions that asked respondents to name specific ballot issues in their states.

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[36] Using Spearman's rho to examine the relationship between results from statement 1 and statements 4 and 5, respondents' general support for disclosure is weakly related to their support for disclosure of their personal information (r_s= .285, p=.000) and even less related to the disclosure of their employer's name (r_s= .137, p=.000). Theoretically, such enthusiastic support for disclosure generally should correlate at least moderately if not strongly to support for disclosure of their own contribution to a campaign, resulting in Spearman's rho coefficients of between .50 and 1.00. Instead, coefficients closer to zero indicate a significantly weak relationship. For readers unfamiliar with this test, Spearman's rho (r_s) is a statistical measure of the association of two variables. The association is measured on a scale between –1.0 and +1.0. The closer the number is to 0, the weaker the relationship between variables. A negative number indicates the variables move in opposite directions, such as temperature and altitude. A positive number indicates the variables move in the same direction. In addition, p=level of statistical significance, or the degree to which the value of a given result is greater or smaller than would be expected by chance. Typically, a result is considered statistically significant when the probability of obtaining that result by chance is less than 5%.
[37] When examined using Spearman's rho, the relationships are even weaker than those prior. In fact, with a relationship of r_s= -.027 (p=.190) between statements 1 and 6 and a relationship of r_s= .007 (p=.747) between statements 1 and 7, it is more accurate to say there is no relationship between general support for disclosure and the likelihood of contributing to a campaign.
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[39] When correlated against their general support for disclosure, respondents' reported knowledge of laws governing contributions is practically zero (r_s= .021, p=.317). The same is true when correlating support for disclosure with knowing where to access disclosure lists (r_s= .055, p=.007) and reading those lists (r_s= .159, p=.000).

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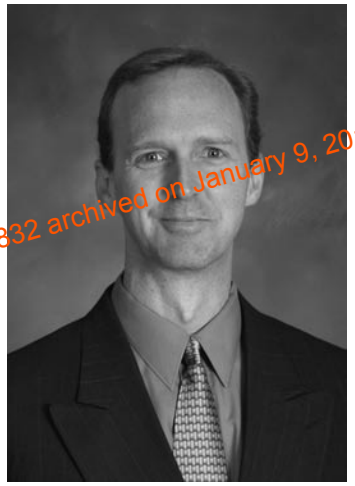

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