INSTITUTE FOR JUSTICE

December 15, 2011

Via Email
The Honorable Scott Gessler
Secretary of State
1700 Broadway, Suite 200
Denver, CO 80290

RE: Notice of Proposed Rulemaking, Rules Concerning Campaign and Political Finance, 8 CCR 1505-6

Dear Mr. Secretary:

I am writing on behalf of the Institute for Justice, a nonprofit, public-interest law firm that litigates nationwide on behalf of people whose most basic rights are threatened by the government. These comments are submitted in response to your office's notice of proposed rulemaking concerning the recodification of Colorado's campaign-finance regulations.

For several years now, the Institute has been deeply concerned about the threat that burdensome campaign-finance regulations pose to free speech. This concern has led the Institute to file numerous First Amendment challenges to campaign-finance laws across the country, including here in Colorado.[1] One of our particular areas of concern is the effect that campaign-finance laws have on grassroots political speech regarding candidates and ballot issues.

Our original research has shown that campaign-finance laws—including specifically Colorado's—fall hardest on political novices, who find these laws to be both intrusive and confusing.[2] These findings are consistent with those of the California Fair Political Practices Commission, which in 2000 issued a report describing California's campaign-finance laws—

[1] *See*, *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010); *Independence Inst. v. Coffman*, 209 P.3d 1130 (Colo. Ct. App. 2008).
[2] *See* Dick M. Carpenter II, *Disclosure Costs: Unintended Consequences of Campaign Finance Reform* (Institute for Justice 2007), *available at* http://www.ij.org/1624; Jeffrey Milyo, *Campaign Finance Red Tape: Strangling Free Speech & Political Debate* (Institute for Justice 2007), *available at* http://www.ij.org/1527.

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which are similar to Colorado's—as "overly complex and unduly burdensome."[3] Our research has also found that disclosure laws like those Colorado imposes on ballot-issue committees fail to serve any legitimate state interest.[4]

On the basis of these findings and our interpretations of the relevant legal precedents, the Institute believes that much of Colorado's system of campaign-finance regulation is unconstitutional, and that many of its constitutional deficiencies cannot be remedied by rulemaking. Despite these concerns, and although many of the changes proposed in the rulemaking do not go as far as the Institute would prefer, the Institute believes that several of the newly proposed rules provide much-needed clarity to the law and reduce the burden on speakers. Others, however, impose unnecessary burdens on political speakers that are not compelled by either the Colorado Constitution or the Fair Campaign Practices Act, and should be appropriately modified before enactment. Comments on specific proposed rules are provided below.

New Rule 1.10

The adoption of *Buckley v. Valeo*'s express-advocacy test for determining when a group qualifies as a "political organization" under Colo. Stat. § 1-45-103(14.5)—and is therefore subject to PAC-like registration and disclosure requirements—provides a much-needed bright-line test. This test also mitigates some, but not all, of the unconstitutional overbreadth of the registration and disclosure requirements that apply to political organizations. Thus, although the Institute believes that any system of PAC-like registration and reporting for organizations that engage solely in independent expenditures is unconstitutional,[5] this proposed rule is a step in the right direction.

Rule 1.12 (formerly Rule 1.7)

The adoption of a 30-percent-expenditure threshold for determining when a group has "a major purpose" of influencing a ballot-issue campaign provides another much-needed bright-line test. Colorado's "a major purpose" language—as opposed to the more objective "the major purpose" language endorsed by the U.S. Supreme Court—has been a source of confusion and an

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[3] Bipartisan Commission on the Political Reform Act of 1974, *Overly Complex & Unduly Burdensome: The Critical Need to Simply the Political Reform Act* (2000), *available at* http://www.fppc.ca.gov/pdf/mcpherson.pdf.

[4] *See* David Primo, *Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters and Stifle Public Debate* (Institute for Justice 2011), *available at* http://www.ij.org/publications/4105.

[5] *See Citizens United v. FEC*, 130 S. Ct. 876, 897–98 (2010) (holding PAC requirements unconstitutionally burdensome for corporations).

object of litigation.[6] The Institute believes that any form of disclosure for groups engaged solely in independent political speech regarding ballot issues is unconstitutional.[7] The Institute also believes that requiring organizations with anything less than *the*, singular, major purpose of influencing elections to comply with PAC-like registration and disclosure requirements is unconstitutional.[8] Nevertheless, an objective threshold like that proposed in Rule 1.12 is a step in the right direction and is clearly preferable to the present, subjective standard.

Rule 1.18 (formerly Rule 1.10)

The adoption of an objective major-purpose test for determining when a group qualifies as a "political committee" provides another much-needed bright-line test and brings Colorado law into conformance with the requirements established by the U.S. Supreme Court in *Buckley v. Valeo*, 424 U.S. 1 (1974).

New Rule 3.3 & Rule 5.2 (formerly Rule 14.6)

These rules, which exempt from contribution limits groups that raise money solely for the purpose of making independent expenditures, are a necessary and appropriate response to the fact that such limits have widely been recognized to be unconstitutional.[9]

Rule 4.1

This rule, adopted in response to the Tenth Circuit's ruling in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010), creates a $5,000 contribution/expenditure threshold for registration as an issue committee. Although the Institute believes that any form of disclosure for ballot-issue speakers is unconstitutional, and that PAC-like requirements in particular violate the Supreme Court's ruling in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), this heightened threshold partially mitigates the unconstitutionality of the previous $200 threshold that was struck down in *Sampson* and reduces the burden on grassroots speakers.

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[6] *Independence Inst. v. Coffman*, 209 P.3d 1130 (Colo. Ct. App. 2008).
[7] *See, e.g., McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334 (1995); *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010).
[8] *Compare* Rule 1.12 with Rule 1.18.
[9] *See, e.g., SpeechNow.org v. FEC*, 599 F.3d 686 (D.C. Cir. 2010) (en banc); *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 293 (4th Cir. 2008); *Long Beach Area Chamber of Commerce v. City of Long Beach*, 603 F.3d 684, 687 (9th Cir. 2010); *Wis. Right to Life State PAC v. Barland*, NO. 11-2623, 2011 U.S. App. LEXIS 24566 (7th Cir. Dec. 12, 2011).

Rule 7.2 (formerly Rule 4.20)

Although the Institute believes that "political organizations" engaged solely in independent political advocacy cannot constitutionally be forced to comply with PAC-like registration and disclosure requirements, proposed Rule 7.2 imposes meaningful limits on the types of groups that will be subject to these burdensome regulations. The requirements that a group have "the major purpose" of influencing elections and raise or spend at least $25,000 partially mitigate the burden that these requirements impose on grassroots political activists and small organizations.

Rule 10.1.1

This rule requires committees to disclose the identity of any person who contributes, in the aggregate, $20 or more during a reporting period, even if that person's individual contributions are less than $20. As a result, this rule essentially compels committees to collect contributor-identifying information for all contributions, regardless of size. There is no evidence that this requirement is necessary or will provide voters with useful information. This requirement needlessly adds to the paperwork burden that small committees face, and essentially outlaws informal fundraising techniques like bake sales or "passing the hat." The Institute respectfully suggests that the Secretary of State consider adopting a rule that exempts committees from having to collect contributor-identifying information for contributions of less than $20.

Rule 10.1.4

This rule requires the return of any contribution of $100 or more for which the reporting committee is unable to determine the contributor's occupation or employer. The Institute respectfully suggests that this requirement is unnecessarily strict, and would recommend that Secretary of State consider adopting a "best efforts" standard like that used by the Federal Election Commission. *See* 11 C.F.R. § 104.7 (permitting committees to retain contributions for which contributor information is unavailable if the committee has made certain specified "best efforts" to acquire the information).

Rule 10.2.2

This rule requires committees to report the identifying information for any person who receives, in the aggregate, $20 or more in expenditures from the committee during any reporting period. As a result, this rule essentially compels committees to collect identifying information for all expenditure recipients, regardless of expenditure size. There is no evidence that this requirement is necessary or will provide voters with useful information. This requirement needlessly adds to the paperwork burden that small committees face. The Institute respectfully suggests that the

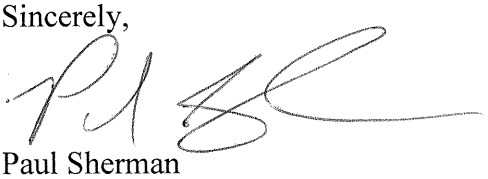
Secretary of State consider adopting a rule that exempts committees from having to collect identifying information for recipients of expenditures of less than $20, regardless of the aggregate total expenditures that person receives during a reporting period.

New Rule 15.6

This rule clarifies that the current $5,000 threshold for registration as an issue committee applies to issue committees that support or oppose a recall election. Although the Institute believes that it is unconstitutional to require recall committees that make only independent expenditures to register with the state and disclose their contributions and expenditures, the $5,000 threshold partially mitigates the unconstitutionality of Colorado's laws recognized in *Sampson v. Buescher*, 625 F.3d 1247 (10th Cir. 2010).

The Institute for Justice thanks the Office of the Secretary of State for this opportunity to comment on the proposed rulemaking. Along with these comments, the Institute has attached the following reports on the effects of campaign-finance laws on grassroots political speakers: *Disclosure Costs: Unintended Consequences of Campaign Finance Reform*; *Campaign Finance Red Tape: Strangling Free Speech & Political Debate*; and *Full Disclosure: How Campaign Finance Disclosure Laws Fail to Inform Voters and Stifle Public Debate*. We respectfully request that these reports be added to the record.

Sincerely,



Paul Sherman
Attorney
Institute for Justice

CAMPAIGN FINANCE RED TAPE: STRANGLING FREE SPEECH & POLITICAL DEBATE

By Jeffrey Milyo, Ph.D.

Institute for Justice | October 2007

CAMPAIGN FINANCE RED TAPE: STRANGLING FREE SPEECH & POLITICAL DEBATE

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Executive Summary

Twenty-four states permit citizens to make laws directly through ballot measures. These states also regulate how citizens—if they band together—may speak out about them. In the name of "disclosure," these regulations impose complicated registration and reporting requirements, administered by state bureaucrats, on political speech and activity by any citizen group that joins the public debate over ballot issues.

This report examines the effects of the bureaucratic red tape created by disclosure regulations on ordinary citizens through a large-scale experiment with 255 participants. They were asked to complete the actual disclosure forms for California, Colorado or Missouri based on a simple scenario typical of grassroots political activity—one modeled after a real group sued for violating campaign finance disclosure laws.

Key findings include:

- On average, participants could not correctly complete even half the tasks, managing just 41%.
- No one completed the forms correctly. In the real world, all 255 participants could be subject to legal penalties including fines and litigation.
- Before the experiment, 93% had no idea they needed to register and file various forms to speak about a ballot issue—a legal trap that can catch innocent citizens.
- Several tasks common to grassroots campaigns proved especially challenging, such as reporting non-monetary contributions for items like discounted t-shirts and supplies for signs, with scores ranging from 0% to 46% correct.
- Clerical errors were rampant, which could lead to huge compounded fines.
- Participants' troubles with nearly all tasks and their feedback after the experiment make clear that disclosure forms and instructions are unclear and ambiguous. Responses include: "Worse than the IRS!" and "Seriously, a person needs a lawyer to do this correctly."
- Nearly 90% of participants agreed that this red tape and the specter of legal penalties would deter citizens from engaging in political activity.

Most advocates and detractors of campaign finance reform assume that disclosure laws for ballot issue campaigns impose few burdens. But these results indicate the opposite: Ordinary citizens get a failing grade on navigating the red tape required to speak about ballot issues—and that makes them less likely to do so.

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"Apparently, it takes a lot of bureaucracy and red tape to oversee free speech, even when it involves relatively straightforward debate for or against a clearly defined ballot measure."

Introduction

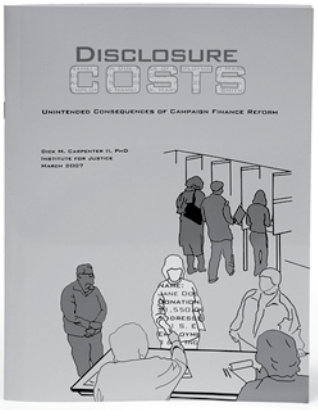
How hard should it be to speak your mind on political issues? Before speaking out in public, should you be required by the government to declare your political positions, register as a political committee and then maintain and declare itemized records of every related transaction? Should you be compelled to "out" the name, address and employer of anyone who makes a contribution in support of your cause? For that matter, should you expect that the price of your own support for a political group is that your personal information will be collected, reported to bureaucratic authorities, and publicly disseminated on the Internet? In general, this is exactly what state campaign finance disclosure laws do.

As Americans, we take pride that our Constitution recognizes and enshrines basic political freedoms. But just try to get involved in political life, and you will soon find out how far we have come from the time of anonymous pamphleteers holding forth on the great issues of the day. Apparently, it takes a lot of bureaucracy and red tape to oversee free speech, even when it involves relatively straightforward debate for or against a clearly defined ballot measure.

This is the second of two reports on the costs of campaign finance disclosure for ballot measures; in *Disclosure Costs: Unintended Consequences of Campaign Finance Reform*, Dr. Dick Carpenter demonstrates that very few people actually use the information that states require to be disclosed, and most people do not even know where to find such information. This report focuses on a different and often ignored aspect of disclosure regulations: the effects of the bureaucratic red tape created to administer those regulations.

I conducted several experiments in which participants attempted to fill out state disclosure forms given a simple scenario of transactions for a hypothetical ballot issue committee. The point of the experiments was to examine whether ordinary citizens can successfully perform the duties mandated by the states as a condition for participating in the public debate over ballot measures. To preview the results: Participants were thoroughly flummoxed, and many expressed exasperation with the disclosure process in no uncertain terms. In practice, if citizens fail to completely comply with disclosure rules, they can be hit with large fines and may even be subject to private enforcement actions. The compliance experiments confirm that state disclosure requirements are unfamiliar and complicated for ordinary citizens. Thus, mandatory disclosure not only is intimidating but creates a legal trap for citizens who attempt to participate in public policy debates.

The experimental subjects were rated on 20 specific disclosure tasks, from correctly registering as a ballot issue committee to correctly itemizing several monetary and non-monetary transactions of differing amounts. On average subjects managed to get just 41% of these tasks correct, with no subject correctly completing more than 80%. About half reported that they needed more than the allotted 90 minutes to complete the tasks, with the self-reported time needed to finish the compliance experiment ranging from "just a few minutes" to "till Hell freezes over." However, even those subjects who had sufficient time performed poorly. After the experiment, subjects had the option to comment on the disclosure forms and instructions; by a ratio of better than 20 to one their comments were negative, such as: "This is horrible!" and "worse than the IRS!" and "Seriously, a person needs a lawyer to do this correctly."



Disclosure Costs: Unintended Consequences of Campaign Finance Reform, which examines the impact of mandatory disclosure of contributions and contributors' personal information, is available at www.ij.org.

To date, policymakers and scholars have, much like advocates for increased regulation, ignored or even dismissed concerns about compliance costs. Disclosure is typically considered completely benign, or even a desirable end in itself. These findings, however, demonstrate that the regulatory burden of compliance for ordinary citizens is quite substantial.

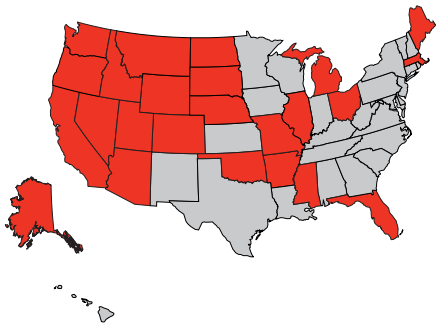
DISCLOSURE REGULATIONS FOR BALLOT ISSUE COMMITTEES

Twenty-four states permit voters to make laws directly through ballot measures; in each of these states, people who band together with fellow citizens to meaningfully act to support or oppose a ballot measure must register as a political committee with their state government. Such groups must then report all but the most trivial of financial activities, along with the name, address and even employer's name of each financial supporter. For example, in Arizona ballot issue committees must not only itemize every expense made by the committee but also must report the name, address and employer of anyone contributing $25 or more. Several states set the contribution threshold for reporting the employer's name somewhat higher ($100 in Florida and Michigan), although most states require the name and address of contributors for even smaller amounts. California and Ohio require every contribution to be itemized, regardless of the amount involved. The appendix lists disclosure thresholds across the states.

Anonymous contributions that exceed minimum thresholds are prohibited. But true anonymity is also impossible simply because these disclosure rules apply to aggregate contributions. Therefore, to comply with the law political committees must collect personal information from all contributors, no matter how small the contribution. Otherwise, it would be impossible to know whether a particular contributor had donated enough in the aggregate to exceed the reporting threshold.

Further, disclosure regulations also apply to contributions "in kind" (i.e., non-monetary contributions), such as items like t-shirts or services like printing, although most jurisdictions omit services that are not related to the donor's profession. So an accountant who volunteers her professional services to a political committee has made a non-monetary contribution that must be assigned a value, aggregated with her other donations and disclosed. But if the accountant instead provides free janitorial services for the committee, that activity would typically not be considered a contribution.[1]

Accounting and reporting rules may also apply to political activities independent of any campaign—a homemade yard sign, for example. Such activities might be considered an "independent expenditure," depending on state rules and on the degree of contact and communication with anyone connected to a registered political committee. Even for a homemade yard sign, the value of the



Twenty-four states permit voters to make laws directly through ballot measures; in each of these states, people who band together with fellow citizens to meaningfully act to support or oppose a ballot measure must register as a political committee with their state government.

supplies and the commercial value of advertising space should be counted as part of the "independent expenditure" and reported, though the person who made and displayed the sign need not form and register as a "political committee" if acting alone. But in most states if two or more persons together engage in a similar independent political activity, then that may meet the definition of a "political committee," triggering registration and reporting requirements.

Grassroots political groups must be aware of registration and disclosure regulations and decide whether they will meet the definition of a political committee, usually in advance of any political activity; most states allow a grace period of just a few days for groups to register and begin complying with disclosure laws (although Colorado does not have a grace period). So, if a group of neighbors spontaneously organizes to oppose an annexation measure (as in Parker North, Colo.; see sidebar, page 4), they could easily and unwittingly violate the registration and reporting requirements. Or a registered committee might violate reporting requirements by not declaring as "in-kind" contributions the activities of people unrelated to the committee.

Registered "ballot issue committees" must also designate a person to be legally responsible for collecting and reporting the details of the group's contributions and expenditures repeatedly throughout the year. And in many states, contributions to ballot issue committees close to the election trigger additional reports.

WHY THE RED TAPE MATTERS

Aside from the invasion of privacy and hassle of state disclosure regulations, it takes a degree of political and accounting sophistication to navigate the administrative procedures and forms necessary to comply with disclosure laws. Disclosure forms are typically at least as complex as tax forms, but with instructions that tend to be less clear and accessible to the general public: How many ordinary citizens can confidently distinguish between an independent expenditure and a non-monetary contribution? Such jargon is obscure to most people, and the details of political campaign finance laws are likewise foreign territory. Not only are the forms and jargon likely to be intimidating, but any mistakes in reporting to the state may lead to legal penalties.

A ballot issue committee that omits or misreports even one transaction is subject to fines that can cumulate with each oversight. For even a very small group with just a few contributors and expenditures, missing one filing deadline might generate hundreds of thousands of dollars in fines, or more. California hit a political committee that spent just over $100,000 with $808,000 in fines, even though the maximum fine was $2,000 per violation: The state tallied each missing name, address and employer name as a separate violation.[2] Of course, state regulators always have some discretion to go easy, especially for a first-time

DISCLOSURE LAWS FOR BALLOT MEASURES FACILITATE POLITICAL HARASSMENT

In 2006, the residents of Parker North, Colo., a neighborhood of about 300 homes, were embroiled in a debate over the merits of being annexed into a nearby town. Prior to a neighborhood-wide vote on the issue, Karen Sampson and other neighbors opposed to annexation did what citizens in a democracy are supposed to do: They posted lawn signs, distributed flyers and generally tried to persuade more neighbors to their side.

The reward for civic participation in Parker North? Proponents of annexation sued Karen and five other vocal critics, arguing that their actions violated campaign finance laws. All the neighbors did was exercise their First Amendment right to free speech on a matter of public interest. But in Colorado, if two or more people band together and engage in political activities valued at more than $200, they must register as an "issue committee."

But the neighbors in Parker North were not aware of this law, nor did they know that they had to comply with the law's numerous confusing regulations. For instance, they failed to itemize all monetary and non-monetary transactions of more than $20. Just to speak out legally against the annexation of their own property, they had to record what they spent on markers, poster boards, copies and so on.

The plight of Parker North residents is a lesson in unintended consequences. Though purported to root out undue influence in and corruption of the political process, Colorado's campaign finance laws were abused to chill political speech and activism that the Founders sought to protect with the First Amendment.

transgressor, and perhaps especially if they are sympathetic to the group or issue in question. For this reason, several states also allow private citizens to sue groups they believe may have violated disclosure laws. But these private enforcement actions also afford a means to harass political opponents, all the more so if groups can easily run afoul of the minutia of reporting requirements.

Esoteric and complicated regulations set a legal trap for unwary citizens, as in Parker North, where political opponents exploited their knowledge of disclosure regulations to harass citizens with contrary opinions.

To be sure, large and well-established interest groups employ full-time campaign treasurers, compliance officers and election lawyers who are unlikely to be intimidated or confused by campaign finance regulations. But the political arena is not intended to be the province of only a handful of expert elites; active participation in public debate is the right of all American citizens. Policymakers should be concerned about the ability of ordinary citizens to successfully comply with campaign finance regulations.

Unfortunately, this has not been the case; instead, state disclosure regulations have been adopted and refined without concern for the ease of compliance, or what this red tape might mean for political participation by ordinary citizens.[3] Not only are there no scientific evaluations of the costs and benefits of campaign finance disclosure regulations for ballot measure committees, little serious consideration has been given to the potential administrative costs of regulatory compliance with disclosure laws.[4]

THE COMPLIANCE EXPERIMENT

To gauge people's ability to understand and comply with ballot measure disclosure laws, I conducted experiments using actual disclosure forms and instructions from three states: California, Colorado and Missouri. California was selected because it is often held up as a model for disclosure reform by advocates of increased regulation.[5] Colorado was included because it has relatively stringent laws on committee registration and low thresholds for reporting itemized contributions and expenditures (at $20); Colorado regulations are also of interest given the plight of citizens in Parker North. Finally, Missouri was chosen since all of the experimental subjects are from there; this provides a baseline to see if participants are more successful at complying with their own state's disclosure requirements (they are not).

I first created a simple scenario of contributions and expenditures for a small ad hoc ballot issue committee called "Neighbors United," loosely based upon the circumstances in Parker North. The scenario includes only one expenditure item and a handful of small and large contributions, including non-monetary

"Policymakers should be concerned about the ability of ordinary citizens to successfully comply with campaign finance regulations."

Table 1: Overall Performance on Selected Disclosure Requirements
(Average percentage of disclosure tasks correctly completed)

	STATE DISCLOSURE FORMS		
	CALIFORNIA	COLORADO	MISSOURI
PANEL ONE: UNADJUSTED RESPONSES			
All subjects (255 subjects)	29% (61 subjects)	48% (141 subjects)	37% (53 subjects)
Non-students (87)	30% (9)	47% (47)	38% (31)
Graduate students (126)	29% (43)	48% (70)	31% (13)
Undergraduate students (42)	29% (9)	48% (24)	40% (9)
Finished experiment (127)	30% (20)	44% (76)	32% (31)
PANEL TWO: ADJUSTED RESPONSES FOR COMMON SAMPLE CHARACTERISTICS ACROSS EXPERIMENTS			
Scenario One: Non-student, college-educated and registered voter	29%	47%	37%
Scenario Two: Non-student, college-educated, registered voter and finished experiment	32%	49%	39%
Scenario Three: Graduate student, registered voter and finished experiment	35%	52%	42%
Scenario Four: Undergraduate student, registered voter and finished experiment	33%	50%	40%

Note: Adjusted responses are the predicted results for the case where all subjects have the same selected characteristics; see endnote 7 for details.

and anonymous donations (see sidebar, pages 7 and 9). This scenario was given to 255 experimental subjects, who were asked to complete the disclosure forms for a particular state, using the actual instructions and handbooks. Subjects had 90 minutes to complete the forms and were paid for their participation. To give participants an incentive to fill out their forms correctly, subjects were paid $20 for participating and up to an additional $20 based on their performance. Subjects were scored on 20 specific tasks; the overall score is simply the percent of these tasks that were correctly completed.

The experimental subjects in this study were recruited primarily from graduate students in political science, public affairs and economics at the University of Missouri and from non-student adults (age 25 to 64) in Columbia, Mo.; a few undergraduate students, mostly graduating seniors in economics or political science and all at least 20 years old, also participated. Table 1 reports the breakdown of participants by type and the average score for each group. In the top panel, I report the unadjusted average scores for subjects by type and by the state forms they used; I also report in the parentheses the number of subjects that attempted to complete the disclosure forms for each state.

NEIGHBORS UNITED EXPERIMENT SCENARIO

This is the text of the experimental scenario used by participants to complete registration and disclosure forms (in this case for Missouri). The last column, not given to participants, gives some indication of how to correctly complete the forms.

DATE	ACTION/EVENT	REALITY
October 1st, 2006	1) Abel learns about a ballot proposal to increase the minimum wage (Proposition B) in Missouri; the proposal is to be voted on in the November 7th, 2006 general election. Abel is in favor of the passage of Proposition B; he makes a sign that reads: "YES on B" and places it in his front yard. Abel makes his sign from items found in his garage; the fair market value of the supplies used to make the sign is $2.	No need to report this activity and speech. The fair market value of the sign does not meet the threshold for registering as an issue committee in most states.
October 4th	2) Abel asks you to be the (unpaid) treasurer and compliance officer for "Neighbors United"; you are the only officer in the group and your address will be the group's address. You open up a checking account for Neighbors United at Wells Fargo Bank (the account number is 12345). Abel writes a check for $2,000 to Neighbors United to open the account (assume all contributions are deposited the same day that they are received). You will need to complete the "Statement of Committee Organization" in the packet labeled "PART TWO: FORMS."	Initial funds on hand are $0; the $2,000 monetary contribution from Abel to Neighbors United must be itemized (name, address and employer in most states). You must disclose that your group favors Proposition B. Also disclose the Treasurer's name and address and the group's complete bank account information. In Missouri, you must register as a committee at least 30 days prior to the election. In California, you must include "A committee in support of Proposition B" in the official name of your group.
October 15th	3) Abel talks to his neighbor, Baker, who is also in favor of Proposition B. Abel and Baker decide to invite other interested and like-minded persons in their neighborhood to a meeting at Abel's house the following week; the purpose of the meeting is to discuss ways in which the group can work to support passage of Proposition B.	
October 17th	4) You receive an official notice from the Secretary of State that Neighbors United is a registered committee (ID #3456).	Record this identification number on all of your disclosure forms.

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FAILING GRADES FOR ALL

Overall, subjects scored just 41% correct, albeit a little better with Colorado disclosure forms (48%) and a little worse with California forms (29%). Participants did not perform especially well on forms for Missouri (37%), so there was no apparent advantage for participants using forms from their own state. Further, not one participant scored better than 80% in the experiment. It is particularly disconcerting that subjects could not complete half of the disclosure tasks that were scored, regardless of the state forms; after all, the subject pool was composed of mostly college-educated people, many of whom were pursuing advanced degrees in political science and public affairs.

All 255 participants in this experiment would be subject to legal penalties if they were in fact responsible for complying with disclosure regulations. Worse still, in the real world—without the explicit instructions provided in the experiment—most participants would not have even known that they had to fill out forms to speak out about a ballot issue, just like the citizens in Parker North. In fact, in a survey of 217 subjects before the experiment, only 7% knew anything about the need to register political groups like Neighbors United. Further, even these knowledgeable participants had trouble with the disclosure forms; their average scores in the experiment were no better than those of other subjects.

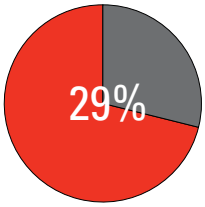
Most participants also completed a short debrief questionnaire; about 44% of those responding indicated that they needed more time to complete the forms, with the amount of time needed ranging from "just a few more minutes" to "till Hell freezes over." However, the results shown in Table 1 demonstrate that those who had sufficient time to complete the experiment fared about the same as the others, or even a bit worse. Therefore, it is not the case that had subjects been given more time they would have improved their performance dramatically in the compliance experiment.[6]

To accurately compare scores across states and groups of subjects, the scores in the top panel of Table 1 had to be adjusted to account for subject characteristics that could affect performance (such as age, voter registration status, education and whether the subject completed the forms). The bottom panel of Table 1 shows the adjusted scores for several different scenarios; these are the predicted average scores if all subjects had the same characteristics.[7] These adjusted scores reveal that students had slightly more success than non-students and that California forms were the most challenging for all subjects. Also, once the subject mix is adjusted, those who completed the experiment do indeed score higher. However, the primary lesson from adjusting scores in this way is that there are few differences across subject types; all subjects had difficulties across the board and regardless of their background. Consequently, for ease of comparison in all subsequent tables, I report only the adjusted scores for just one subgroup: non-student adults who are college educated, registered voters and finished the experiment.[8]

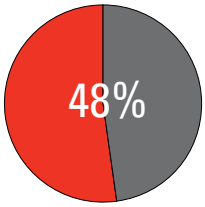
Why did participants have such trouble completing disclosure forms? One possibility is that they were not properly motivated, although I observed the vast majority of subjects working very hard during this experiment. The potential for an extra $20 in incentive pay seemed to motivate subjects to do well; the atmosphere in every session was very similar to a final exam. Even so, if this were

GRADES

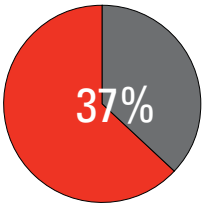
Percentage of tasks completed correctly with each state's forms



CALIFORNIA: F



COLORADO: F



MISSOURI: F

Continued from page 7

DATE	ACTION/EVENT	REALITY
October 20th	5) Abel and Baker use supplies found in Baker's basement to make another 20 yard signs (same fair market value for the supplies used to make each sign as above); these signs are to be given to attendees at the community meeting.	Report the $40 non-monetary contribution by Baker. No need to itemize this in most states, but you must keep a running total of contributions from Baker in your account ledger.
October 22nd	6) A group of 30 persons meets at Abel's house for two hours; Abel serves refreshments to the group (coffee, water and cookies valued at $8). The group decides to hold a rally in support of Proposition B at the local courthouse the following week.	This is a committee activity, so the snacks are an $8 non-monetary contribution made by Abel. This transaction does not need to be itemized in most states, but remember to keep a running total for all contributions from Abel ($2,008, so far).
October 25th	7) Abel finds a small business owner, Cook, that is willing to print up 100 t-shirts and sell them at cost ($5 each versus the usual retail price of $10 each). Abel writes a personal check to Cook for $500 in payment for the shirts (assume all amounts include any relevant taxes).	The t-shirts are a non-monetary contribution by Abel. The discount on the shirts is a non-monetary contribution by Cook. Keep a running total of all contributions from Abel ($2,508).
October 29th	8) Rally Day! There is a large turnout in favor of Proposition B; all 100 t-shirts are distributed to group members and on-lookers. At the rally three anonymous persons contribute $5 each in cash to Neighbors United.	The $15 in anonymous contributions can be kept, but must be reported in the total of monetary contributions. In Missouri you must also complete a separate fundraising statement describing the event in detail.
November 1st	9) Inspired by the local newspaper coverage of the rally, an anonymous donor sends Neighbors United a check for $1,000 to help pay for additional campaign activities in support of the passage of Proposition B.	An anonymous contribution of this amount is illegal in every state. It must be given to the state or an approved charity.
November 3rd	10) Abel decides to take out a half-page advertisement in the local newspaper, the Daily Advocate, for $1,500. The ad is paid in full by a check from Neighbors United in the amount of $1,500.	This expenditure must be itemized.
November 7th	11) Election Day; Proposition B passes 76% to 24%.	
November 10th	12) Both Baker and Cook write personal checks for $500 to Neighbors United.	These two $500 monetary contributions must be itemized. Keep a running total and report aggregate contributions by Baker ($540) and Cook ($1,000).

not a hypothetical exercise, subjects might have done better and surely would have sought help with their forms, perhaps from professionals. However, it is telling that ordinary people without special expertise struggle to follow these procedures. Some people may not want to seek help from strangers to report their activities for or against a politically sensitive ballot measure (e.g., relating to gay marriage, stem-cell research, affirmative action or immigration). Regardless, the effect of campaign finance regulations should not be to reserve politics to a professional elite; the political process should be open to all citizens.

RED TAPE RULES: UNCLEAR & AMBIGUOUS

Participants' difficulties with the disclosure paperwork spanned nearly all the legal requirements, although some tasks were harder than others, as a breakdown of scores across tasks shows. To create an issue committee, citizens must first fill out the committee registration forms and cover sheets for itemized disclosure reports and request an official registration number as a ballot measure or "issue" committee, not as a candidate committee. As Table 2 shows, this task was hardest for the California group (only 25% correct). In addition, California requires committee names to include a statement of whether they are for or against a candidate or ballot measure. Only 36% of the California group met this requirement. Subjects next had to list their official registration numbers on their cover sheets and enter their initial funds on hand. The Colorado group was relatively successful at listing their registration number simply because those forms include a prominent and clearly labeled box, while the California and Missouri forms do not. The final task in this initial set of forms requires that participants declare "zero" initial funds on hand for their group; the success rate for even this task ranged from 44% to 67%.

Table 2: Committee Registration and Report Cover Sheet

	STATE DISCLOSURE FORMS		
	CALIFORNIA	COLORADO	MISSOURI
COMMITTEE REGISTRATION			
Ballot issue committee	25%	72%	82%
Legal committee name	36%	n.a.	n.a.
DISCLOSURE REPORT COVER SHEET			
Committee identification number	49%	93%	40%
Funds on hand	44%	67%	52%

Note: Percent correct responses adjusted for common subject characteristics across experiments (college-educated, non-student and registered voter); see endnote 7 for details.

"One truly needs

LEGAL COUNSEL

to complete these

FORMS..."

While the initial disclosure tasks proved a stumbling block for many subjects, participants fared a little better at reporting simple monetary contributions. However, anonymous and non-monetary contributions were more difficult for people to handle. The scores for reporting contributions are listed in Table 3, with separate panels for different types of disclosure items. The top panel lists scores on disclosure of monetary contributions. For example, only 80% of subjects using the Missouri forms could correctly itemize the initial contribution of $2,000 from Abel. However, in all but one case, subjects fared worse using California and Colorado forms or reporting other direct monetary gifts. Just over half the subjects using the California forms successfully itemized the direct cash contributions made by Baker and Cook. The small anonymous contributions totalling $15 did not need to be itemized, but should have been included in reported contribution totals; only 51% of those using Colorado forms, and 77% for Missouri, correctly included it.

By far the most difficult transaction for subjects was the anonymous gift of $1,000. This contribution is illegal in all three states, and the correct procedure is to give it to the state or an approved charity. Missouri subjects scored just 8% on this task, while those using Colorado and California forms scored just 3% and 2%. Some subjects noted on their forms that they needed to get the name of this anonymous contributor or otherwise "flagged" the anonymous contribution as problematic, even if they did not handle it correctly. Nevertheless, even counting such actions as correct only raises average scores to 28% for Colorado, 22% for

Table 3: Recording Contributions

	STATE DISCLOSURE FORMS		
	CALIFORNIA	COLORADO	MISSOURI
MONETARY CONTRIBUTIONS			
Abel $2,000 check	60%	72%	80%
Cook $500 check	54%	78%	62%
Baker $500 check	53%	80%	65%
Anonymous $15 cash	69%	51%	77%
Illegal anonymous $1,000 (flagged or correct)	2% (8%)	3% (28%)	8% (22%)
NON-MONETARY CONTRIBUTIONS			
Abel $8 in refreshments	30%	36%	24%
Baker $40 in supplies	18%	46%	26%
Abel $500 in t-shirts	0%	6%	14%
Cook $500 discount on t-shirts	24%	30%	43%
AGGREGATE CONTRIBUTIONS BY SOURCE			
Baker's $540 total contribution	7%	3%	2%
Cook's $1,000 total contribution	2%	2%	1%

Note: Percent correct responses adjusted for common subject characteristics across experiments (college-educated, non-student and registered voter); see endnote 7 for details.

Missouri, and just 8% for California. The very low success rates for handling illegal anonymous contributions illustrate that unless people already know the law, they are unlikely even to look up how to handle an anonymous contribution.

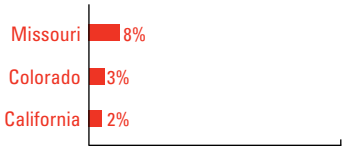
Non-monetary contributions presented even greater problems for subjects, as did aggregating contributions by donor, as shown in the lower panels of Table 3. Subjects were informed of the fair market value of all non-monetary contributions, so they only needed to recognize them as such. For example, Abel served refreshments valued at $8 to his group; this amount needs to be disclosed in the contribution totals, although it does not need to be itemized for the states in the experiment. Even so, subjects scored only 24% to 36% on this task. While all of the scores for all of the non-monetary contributions were very poor, the most difficult transaction was the purchase of some discounted t-shirts to be distributed at a political rally. The buyer, Abel, paid $500 out-of-pocket and gave the shirts to his group; only 14% of the Missouri subjects correctly itemized this non-monetary contribution, and the scores were even lower for Colorado (6%) and California (0%). The seller of the t-shirts, Cook, gave Abel a 50% discount; this is also a non-monetary contribution of $500. Only 43% of Missouri subjects correctly itemized this contribution—still better than the scores for Colorado (30%) and California (24%). Again, unless people are familiar with the concept of a non-monetary contribution, they would be unlikely to recognize these in the scenario, let alone look for instructions on how to deal with them.

Practically no one correctly aggregated contributions: The highest score on these two tasks was 7% for subjects using California forms. These low scores are partly because a mistake on any one contribution from a donor makes it impossible to sum contributions correctly. This illustrates how fines that are levied per violation can compound. Another problem is that some state forms are written as if donors only make itemized contributions; users are only prompted to sum contributions on the pages associated with itemized contributions, even though both itemized and non-itemized contributions must be aggregated for each donor.[9]

Neighbors United made only one expenditure, a $1,500 newspaper ad, and other than the California group (49%), most subjects in Missouri (72%) and Colorado (89%) recorded this appropriately, as shown in Table 4. Missouri and California also require committees to disclose in detail the purpose of the expenditure, such as the newspaper advertisement in favor of Proposition B for Neighbors United. This was most problematic for the California group, which scored only 21% versus 61% in Missouri.

The bottom panel in Table 4 describes how subjects fared on miscellaneous tasks. Some subjects filled out unnecessary forms, primarily for Colorado, which requires a separate form for "major donors" to candidate committees but not for ballot issue committees. Seventy-six percent of subjects in the Colorado group failed to realize that their committee was not subject to this requirement and filled out an extra form.

Almost all forms included clerical errors, including omitting the committee registration number repeatedly, adding sums incorrectly and failing to list the employer of a contributor when required. Rather than counting all of those errors, which were often repeated or compounded across forms, I simply report



PERCENTAGE OF PEOPLE WHO TREATED ILLEGAL ANONYMOUS CONTRIBUTIONS CORRECTLY

"The very low success rates for handling illegal anonymous contributions illustrate that unless people already know the law, they are unlikely even to look up how to handle an anonymous contribution."

what percent of respondents included any other clerical errors. But keep in mind that repeated errors may be treated by state regulators as separate violations of the disclosure laws, which could lead to a very large fine, like the $808,000 levy in California.

Finally, only one subject realized that under Missouri law, if a campaign event results in the collection of a few small contributions ($15 in this case), then the committee must file a separate fundraising statement describing the event in detail. This regulation applies even when the event is not intended to be a fundraiser, as in the scenario with Neighbors United.

Table 4: Expenditures and Miscellaneous Errors

	STATE DISCLOSURE FORMS		
	CALIFORNIA	COLORADO	MISSOURI
EXPENDITURES			
$1,500 newspaper advertisement	49%	89%	72%
Purpose of expenditures	21%	n.a.	61%
MISCELLANEOUS ERRORS			
No extra forms completed	89%	24%	99%
No other clerical errors	5%	6%	2%
Fundraising statement	n.a.	n.a.	1%

Note: Percent correct responses adjusted for common subject characteristics across experiments (college-educated, non-student and registered voter); see endnote 7 for details.

The poor scores across the board make plain that disclosure forms and their instructions are unclear and ambiguous, especially for people not well versed in the terminology of campaign finance law. My own examination of the forms and instructions confirms this—and so do participants' responses to a questionnaire after the experiment.

FRUSTRATION & FEAR DETER POLITICAL SPEECH & ACTIVITY

Subjects were sincerely frustrated in their attempts to complete the disclosure forms—and believed that these difficulties would deter political activity.

The data in Table 5 make clear that subjects had a difficult time completing the required disclosures: About three-quarters said they probably made several mistakes, and no one thought that they had made zero mistakes. Further, about

"Subjects were sincerely **FRUSTRATED** in their attempts to complete the disclosure forms—and believed that these difficulties would **DETER** political activity."

two-thirds of respondents agreed that the disclosure requirements would deter many people from engaging in independent political activity. That figure rose to 85% to 89% when the specter of fines and punishment for incorrect compliance was raised. Also, about a quarter to one-half of respondents expressed strong reluctance about making contributions to political groups because of public disclosure.

Table 5: Debrief of Participants

DEBRIEF QUESTIONS	ALL RESPONSES (230 SUBJECTS) (NON-STUDENTS ONLY; 86 SUBJECTS)	
PANEL ONE:	NO MISTAKES	PROBABLY SEVERAL MISTAKES
Q2. Regardless of whether you completed the experiment, do you think you made any mistakes in filling out these forms?	0% (0%)	74% (80%)
PANEL TWO:	NOT AT ALL	PROBABLY WOULD DETER MANY
Q3. Assuming that people are aware of these disclosure requirements, do you think this paperwork might deter ordinary citizens from engaging in independent political activity?	1% (1%)	63% (69%)
Q4. If mistakes on disclosure forms are subject to penalties such as fines or jail time, would knowledge of that deter people from engaging in independent political activity?	1% (1%)	89% (85%)
PANEL THREE:	YES	NO
Q5. If you knew that your name and address would be made public when you contribute to independent political groups such as Neighbors United, would that make you less likely to make such contributions?	24% (24%)	37% (37%)
Q6. Would you be more reluctant to contribute if the issue were controversial?	32% (31%)	32% (37%)
Q7. Would you be more reluctant to contribute if the name of your employer would also be made public?	53% (49%)	22% (29%)
Q8. Would you be more reluctant to contribute if your employer, neighbors or family had strongly opposing views?	35% (30%)	27% (30%)

Note: Middle response category is omitted (Panel One: "might have made a mistake"; Panel Two: "maybe some people"; and Panel Three: "maybe").

Finally, subjects had the opportunity to comment on their experience with the disclosure forms and instructions. Ninety-four subjects chose to comment positively or negatively about the disclosure forms and instructions; only four made positive comments. Two such positive comments were:

The disclosure forms, although tedious and time-consuming, do not seem too unreasonable.

They are very clear. Please recycle these sheets of paper after the experiment is finished.

Both of these subjects scored 40% correct on their forms, just below the average score for all subjects in the compliance experiment. In contrast, the vast majority of written comments (90 out of 94) expressed quite different sentiments:

… too onerous … too detailed

These forms make me feel stupid!

A lawyer would have a hard time wading through this disclosure mess and we read legal jargon all the time.

These forms are confusing!

These forms seem lengthy, full of jargon and confusing …

Worse than taxes.

Ridiculous amount of work.

Good Lord! I would never volunteer to do this for any committee.

Unbelievable!

Wow!

Worse than the IRS!

Very confusing!

Too complex and not clear.

One truly needs legal counsel to complete these forms …

Seriously, a person needs a lawyer to do this correctly.

This is horrible!

My goodness! These were incredibly difficult to understand.

This was awful. I feel bad for anyone who encounters these forms in real life.

"Ninety-four subjects chose to comment positively or negatively about the disclosure forms and instructions; only four made positive comments."

And so on. In fact, after completing the experiment one subject identified herself as a campaign treasurer for a political action committee in Missouri. After seeing her scored forms for Colorado, she wrote:

> *I serve as the Treasurer of a political coordinating committee/political action committee formed within the last year. Even with that limited experience I found this exercise to be complicated and mentally challenging. I took nearly the alloted (sic) amount of time to complete the forms and still made two major errors. The burdensome paper work and fines imposed for errors in reporting proved to be a hurdle that prevented the formation of our PAC (that is affiliated with the non-profit I work for) for a number of years. That being said, in politics it is important to know the major contributors of our elected officials and hold contributors and recipients accountable to the degree possible.*

Therefore, even a political treasurer sympathetic to disclosure found it difficult to comply with the disclosure regulations.

Taken together, the results of the compliance experiment demonstrate that disclosure is a burden for citizens. Given that disclosure regulations constitute a barrier to political participation, why do states impose disclosure on ballot measure committees?

WHY FORCE DISCLOSURE?

Those who favor campaign finance disclosure laws put forward two arguments: First, disclosure may help uncover political corruption and, therefore, deter it. Second, disclosure may provide voters with information useful for determining how to cast their ballot. But both arguments are more applicable to candidate elections than to ballot measures.

There is no anti-corruption justification for regulating the campaign finances of ballot measure committees. This is for the simple reason that the written text of a ballot measure cannot be corrupted—it is unchanging and cannot exchange political favors for money. Nevertheless, many campaign finance reform advocates take a more expansive view of corruption. They argue that if political contributions and expenditures influence electoral outcomes in any manner, then this amounts to political corruption. However, by this logic anything that citizens do to influence policy or policymakers—presumably other than casting a secret ballot—would be "corrupt." This view is incompatible with the basic rights of speech, association and petition that are the foundation of a participatory democracy.

The only possible rationale then for mandatory disclosure of contributors to ballot issue committees—and the accompanying regulatory burden—is that it serves the informational interest of the state. Disclosure exposes to public view those who support or oppose a particular candidate or ballot measure. Ideally, this information would provide voters insight into the true motivations and preferences of a candidate for office, or a shorthand way of determining who stands to gain or lose from the passage of a ballot measure.

Progressive advocacy groups, such as the Ballot Initiative Strategy Center and Common Cause, argue that disclosure for ballot issue committees is fundamental to the "integrity of democracy" and serves to limit the "undue influence" of special interests. Such arguments are founded, however, upon two false propositions.

The first is that transparency is a desirable end in itself. Is more transparency in politics always better than less? If transparency were an end in itself, then contributors should be obliged to disclose all manner of information that might relate to their motives: union membership, support for other political causes or civic groups, ethnicity, race, religion, sexual preference and the like. For example, some people might vote against a ballot measure based on their knowledge of whether it was supported by members of public employee unions, the National Rifle Association or homosexual rights groups. If transparency really is all-important, then it is unclear why only information about a contributor's name, address and employer satisfies the requirement for transparency in campaign finance. Put the other way, why is so much information that might speak to contributors' motives left private, while names, addresses and employer names are not? Clearly, existing mandatory disclosure laws reflect some concern for privacy, just not much.

The second false proposition is that moneyed interests exert "undue influence," or may even exploit the ballot process to dupe an ignorant and inattentive electorate into approving policies that run counter to the public interest.[10] However, the concept of "undue influence" is hollow; I know of no theoretical or empirical analysis of the definition and measurement of "due influence," so it is impossible to determine what constitutes undue influence. Although, in practice, many campaign reform advocates implicitly define "undue influence" as "any influence by groups that I don't like." In effect, advocates of speech regulation assume that there is one "correct" answer for public policy debates and that any influence that works to convince citizens of a different viewpoint is "undue."

However, the proposition that special interest influence is inherently suspect or corrupt has its roots in the naïve and romantic vision of democracy as a means to implement the General Will. The modern incarnation of the dated concept of a General Will is the "public interest." But if the last 50 years of political philosophy and social choice theory have taught us anything, it is that there is no such thing as a General Will, or *the* public interest. Collectives are not unitary actors, so they cannot possess a single will or interest. And if there is no singular correct "public interest," then there cannot be any undue influence.[11]

Instead, democracy is a process by which contending interests debate and lobby to sway the minds of a majority of their fellow citizens. If democratic

deliberation holds any meaning, it must be that occasionally unpopular minority views come to be adopted by the majority; hence special interest activity and influence is less a symptom of corruption and more a vital sign of participatory democracy.

Aside from this, political economy research consistently reveals that the conventional wisdom about the role of moneyed interests in American politics is greatly exaggerated.[12] In particular, there is little evidence that special interests are able to exploit the existence of ballot measure elections to adopt policies that do not otherwise enjoy broad popular support.[13] Therefore, the notion that mandatory disclosure is necessary to keep the too-powerful special interests in check is wrongheaded on both theoretical and empirical grounds.

Another common argument for disclosure is that voters use contributor information as a mental shortcut for better understanding the pros and cons of ballot issues. Thus disclosure is thought to be critical for "citizen competence": the idea that poorly informed voters might use shortcuts to vote as if they were fully informed. Party labels, endorsements, poll results, advertising and the identities of contributors are examples of such shortcuts.[14] However, there is no empirical evidence that mandatory disclosure is in fact important for citizen competence; further, there is good reason to doubt this claim.

The argument that mandatory disclosure is a necessary condition for voters to be reasonably informed ignores the multitude of other potential informational cues that exist, as well as voters' ability to substitute among sources of information. Without mandatory disclosure for ballot committees voters would still have the text of the ballot measure, the official summary, voter guides, campaign advertisements, news reports, endorsements, and friends and neighbors. Given the variety of mental shortcuts available to voters, it is implausible that disclosure is critical to understanding the policy consequences of a ballot measure. Beyond this, arguments for disclosure usually reference large contributions and organized, professional interest groups. I am unaware of any serious claim that knowledge about contributors giving $20, $100 and the like conveys important information to voters.

Finally, the very concept of a "mental shortcut" implies a trade-off between the quality of information and effort. Contributor cues may well make some otherwise uninformed voters more competent, but they may also make some otherwise well-informed voters less competent. Why read and think about the arguments for and against a ballot proposition when you can simply rely on your prejudices about the groups that sponsor or oppose a measure? And contributor information can be exploited to unfairly attack a candidate or ballot measure via the identity or characteristics of their supporters.[15] Indeed, for this very reason some groups prefer anonymity since it permits the arguments of disfavored minorities to rise and fall on the merits rather than on popular preconceptions.

CONCLUSION: DEMOCRACY THROUGH FREEDOM

There should be no doubt that state disclosure laws for ballot measure committees are indeed "overly burdensome and unduly complex"; the compliance experiment demonstrates that ordinary citizens, even if highly educated, have a great deal of difficulty deciphering disclosure rules and forms. Further, confusing and ambiguous regulations create a situation ripe for abuse, as in the examples of citizens running afoul of disclosure rules in Colorado and California. In contrast, the claim that disclosure provides crucial information for voters is not well-supported by evidence.

Nevertheless, "reform" advocates are undeterred, continuing to argue that intrusive disclosure requirements for ballot issue committees are necessary to preserve the "integrity of democracy." But this is a saccharine phrase that only masks their deeply held ideological conviction that disclosure will limit the perceived "undue influence" of unpopular groups by diverting popular attention away from the marketplace of ideas and refocusing it on superficial identity politics. In this way, the mantra of "undue influence" undermines the true purpose and spirit of American democracy.

Citizens in a free society are not automatons with political knowledge and preferences hard-wired for all time, and democracy is not merely an asocial process by which those same changeless beings have their noses counted. Democracy is a dynamic and evolutionary process in which citizen-entrepreneurs strive to persuade others to their cause, all with equal freedom to participate in the manner they choose, and therefore not all with equal vigor, conviction or success. It is not possible for free people to deliberate without some voices wielding influence, and yes, likely a few wielding much more influence than others. Nor is policy innovation possible without special interest advocacy; these oft-maligned special interests are the engine of democratic debate and deliberation.

Democratic outcomes may not always strike us as perfect or even rational, but the genius of liberal democracy is that it is self-correcting precisely because it is dynamic and evolutionary. For example, if the absence of mandatory disclosure of campaign contributors leads some voters to feel duped in some particular election, they are free to change direction in the next, or to petition their legislature to undo what was done in haste. Moreover, citizens can respond by taking care to be more attentive and discerning, which would likely improve the quality of political debate and democratic decision-making.

In contrast, mandatory disclosure skews the political process by robbing citizens of the potential power and safety of anonymous appeals. The reformist's urge to take control, by regulating political activity and speech, stems from a peevish impatience with the creative disorder of democracy and betrays a profound distrust of the wisdom of free people.

Contrary to the unfounded pronouncements of reform advocates, the integrity of democracy is not founded upon bureaucratic procedures like ballot measure committee disclosure regulations, but upon liberty. Mandatory disclosure regulations for ballot measure committees infringe on fundamental political freedoms and potentially deter ordinary citizens from participating more actively in the public debate.

"The integrity of democracy is not founded upon bureaucratic procedures like ballot measure committee disclosure regulations, but upon liberty."

APPENDIX: State Disclosure Laws for Ballot Issue Committees

MINIMUM DOLLAR THRESHOLDS FOR SELECTED DISCLOSURE REQUIREMENTS

		CONTRIBUTORS		
	REGISTER AS COMMITTEE	NAME AND ADDRESS	EMPLOYER OR OCCUPATION	ITEMIZE COMMITTEE EXPENDITURES
Alaska	$500	No minimum	$250	$100
Arizona	500	$25	25	No minimum
Arkansas	500	100	n.a.	100
California	1,000	No minimum	100	100
Colorado	200	20	100	20
Florida	500	No minimum	100	No minimum
Idaho	500	50	n.a.	25
Illinois	3,000	150	500	150
Maine	1,500	50	50	No minimum
Massachusetts	No minimum	50	200	50
Michigan	500	No minimum	100	50
Mississippi	200	200	200	200
Missouri	500	100	100	100
Montana	No minimum	35	35	No minimum
Nebraska	5,000	250	n.a.	250
Nevada	No minimum	100	n.a.	100
North Dakota	No minimum	100	n.a.	100
Ohio	No minimum	No minimum	100	25
Oklahoma	500	50	50	50
Oregon	No minimum	100	100	100
South Dakota	500	100	n.a.	n.a.
Utah	750	50	50	50
Washington	No minimum	25	100	50
Wyoming	No minimum	No minimum	n.a.	No minimum

ENDNOTES

1 There are, of course, exceptions or gray areas to the rules. For example, sports and entertainment celebrities are often paid to make appearances at various business and community events, but celebrity appearances at campaign events are not considered in-kind contributions. In general, artistic performances or other "non-professional" personal services also are exempt from regulation; this is one reason why professional singers often perform at political campaign events.

2 Doherty, Brian (1996). "Disclosure Flaw: the Perils of Campaign-Finance Disclosure Laws," *Reason* (March), http://www.reason.com/news/printer/29856.html.

3 For example, a 2002 report from the Ballot Initiative and Strategy Center (BISC) titled "The Campaign Finance Reform Blind Spot: Ballot Measure Disclosure," grades states' disclosure laws and recommends model legislation, all without a single reference to the compliance costs or administrative burden of disclosure regulations (see http://bisc.avenet.net/vertical/Sites/%7B26C6ABED-7A22-4B17-A84A-CB72F7D15E3F%7D/uploads/%7BA8911D38-14D3-438F-AE43-B78BBADBE500%7D.PDF).

4 For example, Professor Bruce Cain, Director of the Institute of Government Studies at the University of California at Berkeley, in his recent expert report on campaign finance disclosure for ballot measures submitted in support of the defendants in *California Pro-Life, Inc. v. Randolph* (Case No. S-00-1698 FCD/GGH, E. D. Cal. October 1, 2004) had this and only this to say about the regulatory burden of disclosure: "The minor cost and annoyance of disclosing funding sources is a minimal burden to impose..." (p.11).

However, the burden of disclosure requirements has not been universally ignored. In 2000, California's Bipartisan Commission on the Political Reform Act of 1974 issued a voluminous study titled, "Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act" (available at: http://www.fppc.ca.gov/pdf/McPherson.pdf). One theme of this report was the regulatory burden of campaign finance disclosure; the Bipartisan Commission contracted with the Institute for Government Studies (IGS) at the University of California-Berkeley to conduct several empirical studies on enforcement of and compliance with campaign finance disclosure laws in California, under the direction of Professor Bruce Cain (the same as above). Two of these studies in particular speak directly to the substantial burden of compliance with disclosure laws.

The first IGS study of interest was a series of focus groups composed of campaign treasurers, political lawyers and journalists. The IGS summarized several lessons learned from this exercise, including: i) disclosure forms are overly complex and confusing, ii) mistakes are unavoidable, even for experienced filers, iii) violations of compliance are not enforced even-handedly or fairly, and iv) if the persons who designed the disclosure forms had to try to fill them out, they would be more aware of and sympathetic about the burden the forms imposed on filers.

In these focus groups, sessions with both campaign treasurers and political lawyers raised serious concerns and suspicions about improprieties in the enforcement of disclosure violations. The difficulty of compliance combined with discretion in pursuing even the most trivial violations creates a mix that is ripe for abuse, or at least gives rise to the appearance of abuse. Thus the potential "legal trap" set by disclosure laws applies not only to ordinary citizens but also to experts with relevant training and experience.

The second IGS study of interest was a "compliance experiment" in which several subjects, some with political campaign experience, attempted to fill out actual disclosure forms given a common hypothetical scenario. The report does not provide much detail on the experiment, omitting even the number of subjects; however, the report's conclusions also attest to the difficulty that even filers with political experience have in completing disclosure forms correctly (in fact, no subject was able to complete the forms correctly in this experiment). This compliance experiment was the model for the experiments that I conducted; the participants in my experiment likewise found disclosure laws to be overly complex and unduly burdensome.

The California focus groups and compliance experiment directed by Professor Cain give good reason for concern about the regulatory burden of disclosure, certainly more than he exhibited in his expert report in the *Randolph* case. The existence of the Bipartisan Commission's report, and the absence of any attempt to address it in subsequent academic studies or advocacy reports recommending "model" legislation is indicative of a true "blind spot" on the part of several progressive reformers and academic scholars.

5 For example, BISC gives California a grade of "A" for its disclosure rules.

6 Correcting for the particular state forms used, completing the experiment is associated with an increase in scores of about five percentage points. However, this is not a dramatic improvement in the overall scores of subjects.

7 Subject scores are adjusted by regressing scores on indicators for each state, student status, and whether the subject is "not college educated" and "not registered"; the estimated coefficients on the state indicators are then the predicted scores for each state when the subject pool is composed of only college-educated and registered non-students.

8 I chose this particular subgroup based on the notion that it would best represent the type of person that might get involved in a grassroots ballot measure committee.

9 I did not score subjects on whether they aggregated Abel's contributions. In the compliance scenario, Abel makes a small non-itemized and non-monetary contribution to Neighbors' United ($8 for refreshments); however, the state disclosure forms employed never prompt subjects to aggregate this amount with Abel's other itemized contributions. Obviously, this makes compliance all the more challenging.

10 For example, Broder, David (2000). *Democracy Derailed: Initiative Campaigns and the Power of Money*. Harcourt: New York, NY. Garrett, Elizabeth and Daniel Smith (2005). "Veiled Political Actors and Campaign Disclosure Laws in Direct Democracy," *Election Law Journal*, 4(4): 295-328. Gerber, Elizabeth (1999). *The Populist Paradox: Interest Group Influence and the Promise of Direct Democracy*. Princeton University Press: Princeton, NJ.

11 Democratic theorists as diverse as Dahl, Hayek, Schumpeter, and Shepsle have all recognized the impossibility of a unitary public interest; see Milyo, Jeffrey (1999). "The Political Economics of Campaign Finance," *The Independent Review*, 3(4): 537-548.

12 See especially, Lupia, Arthur and John Matsusaka (2004). "Direct Democracy: New Approaches to Old Questions," Annual Review of Political Science, 7:46-82; and Stratmann, Thomas (2006). "Is Spending More Potent For or Against a Proposition? Evidence from Ballot Measures," *Election Law Journal*, 50(3): 788-801. In general, populist fears that campaign spending drives electoral outcomes and leads to a broad alienation of the electorate are (at best) vastly overstated; see Ansolabehere, Stephen, John de Figueiredo, and James Snyder (2003). "Why Is There So Little Money in U.S. Politics?" *Journal of Economic Perspectives*, 17(1): 105-130; and Milyo, Jeffrey, David Primo, and Tim Groseclose (2000). "Corporate

PAC Campaign Contributions in Perspective," *Business and Politics*, 2(1): 75-88; Levitt, Steven (1994). "Using Repeat Challengers to Estimate the Effects of Campaign Spending on Election Outcomes in the U.S. House," *Journal of Political Economy*, 102: 777-798; and Primo, David and Jeffrey Milyo (2006a). "Campaign Finance Laws and Political Efficacy: Evidence from the States," *Election Law Journal*, 5(1): 23-39; and Primo, David and Jeffrey Milyo (2006b). "The Effect of Campaign Finance Laws on Turnout, 1950-2000." Working paper, University of Missouri: Columbia, MO.

13 See especially, Matsusaka, John (2004). *For the Many or the Few: The Initiative, Public Policy and Democracy*. University of Chicago Press: Chicago, IL.

14 On citizen competence, see especially, Lupia, Arthur (1994). "Shortcuts versus Encyclopedias: Information and Voting Behavior in California Insurance Reform Elections," *American Political Science Review*, 88: 63-76. For a critique of the citizen competence literature, see especially, Kuklinski, James and Paul Quirk (2000). "Reconsidering the Rational Public: Cognition, Heuristics, and Mass Opinion," in *Elements of Reason: Cognition, Choice and the Bounds of Rationality*. Ed. By Arthur Lupia, Mathew McCubbins and Samuel Popkin. Cambridge University Press: Cambridge; and Kuklinski, James and Paul Quirk (2001). "Conceptual Foundations of Citizen Competence," *Political Behavior*, 23(3): 285-311.

15 Beyond this, some citizens may stand to benefit from the opportunity to participate anonymously in political life. For example, the secret ballot affords citizens some protection from retaliation for voting "incorrectly," and thereby renders less effective attempts to intimidate people into voting a particular way. Similarly, anonymous contributions protect persons who hold unpopular views, or who belong to disfavored groups. In addition, individuals or groups with unsavory reputations, whether deserved or not, may wish to keep their political preferences private for fear of hurting their favored candidates or causes.

The role of anonymous political speech as a means to protect political rights and encourage participation by unpopular groups has been recognized by the U.S. Supreme Court in *McIntyre v. Ohio Election Commission* (93-986), 514 U.S. 334 (1995); however, in *California Pro-Life Council v. Getman* (328 F. 3rd 1088) the 9th U.S. Circuit Court of Appeals recently recognized that states do have an interest in providing information about contributors to their voters. Left undecided for now by the court in *Getman* is the question of whether this interest is sufficient to warrant compelled disclosure, or whether existing ballot measure disclosure laws are narrowly tailored to meet this informational interest.

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Dr. Milyo's research expertise is in American political economics and public policy; he has been studying the field of political campaign finance for 15 years. Milyo's work has been published in several leading scholarly journals, such as the *American Economic Review*, the *Quarterly Journal of Economics*, the *Journal of Law and Economics*, the *Journal of Policy Analysis and Management*, *Election Law Journal*, *Public Choice,* and *State Politics and Policy Quarterly*. In addition, his scholarly research has been recognized and supported by the National Science Foundation and the Robert Wood Johnson Foundation. Dr. Milyo's research is also frequently cited in the national media, including *The New York Times*, *The Washington Post*, *Los Angeles Times*, *Chicago Tribune*, *USA Today*, *BusinessWeek*, *National Review*, *The Weekly Standard*, CNN, FOX News and National Public Radio.

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Disclosure Costs

Unintended Consequences of Campaign Finance Reform

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March 2007

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Executive Summary

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

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

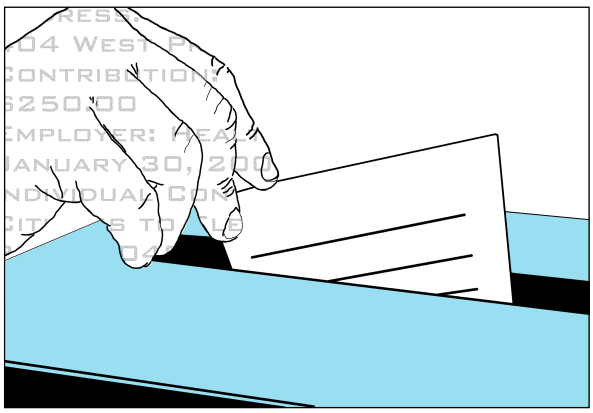
Campaign finance restrictions remain some of the most controversial First Amendment issues in the nation. On the heels of the Watergate scandal, campaign finance laws at both the state and federal levels drew much attention.[1] In 1974 alone, 24 states adopted campaign finance reform laws, and by 1984 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,[9] 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

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.

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]

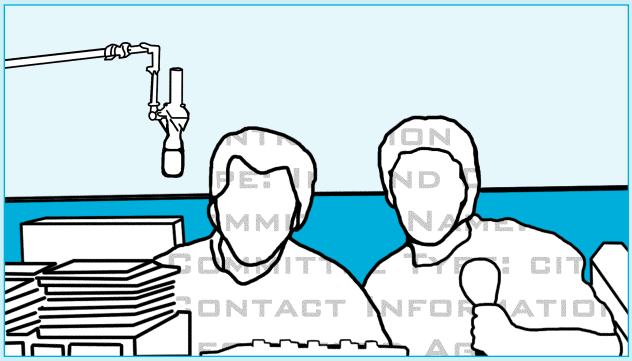
Therefore, we undertook this research to examine some of the assumptions inherent in discussions of campaign finance disclosure laws as they relate to ballot issues. Specifically, we tested the theory that mandatory disclosure contributes to "better" (i.e., more informed) voters by examining voters'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

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.)

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.

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.

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."

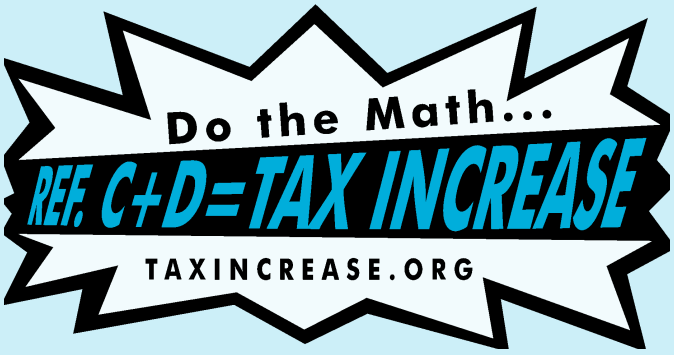
These results address not only a belief (or lack thereof) in disclosure, but also touch upon political involvement. That is, requiring the disclosure of citizens' identities, personal information and employers' names appears to foment reluctance to "speak" or "associate" during the political process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

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.



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

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

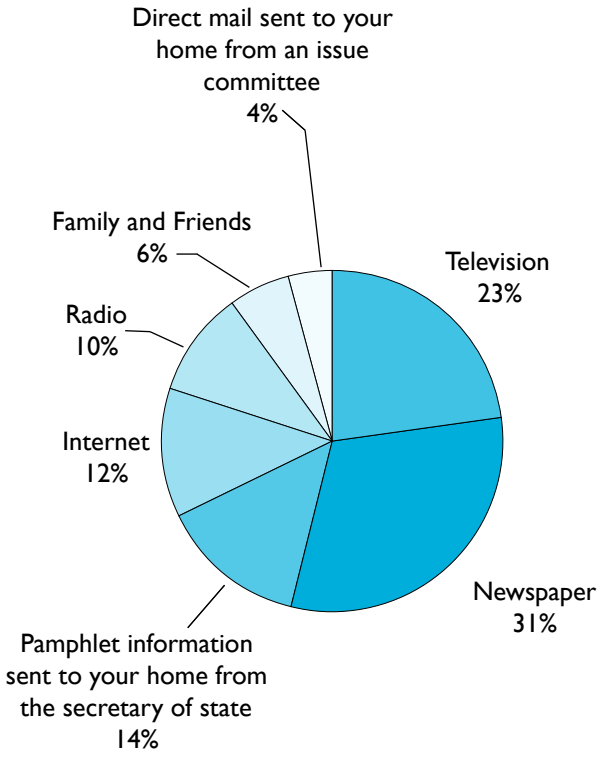


Table 3 Knowledge of Ballot Issues and Supporters Among Respondents Who Named a Ballot Issue

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.

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.

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

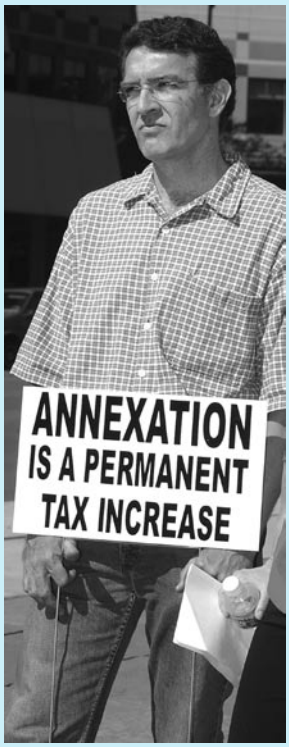
exercises. As of this writing, campaign finance and disclosure in the ballot initiative context are at the center of at least three court cases that impact the free speech rights of ordinary citizens, non-profit groups and even members of the media, two in Colorado and one in Washington state.[43] As 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.

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.

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.

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		

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.
[38] Gais & Malbin, 1997; Schultz, 2005.
[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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The Institute for Justice

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FULL DISCLOSURE

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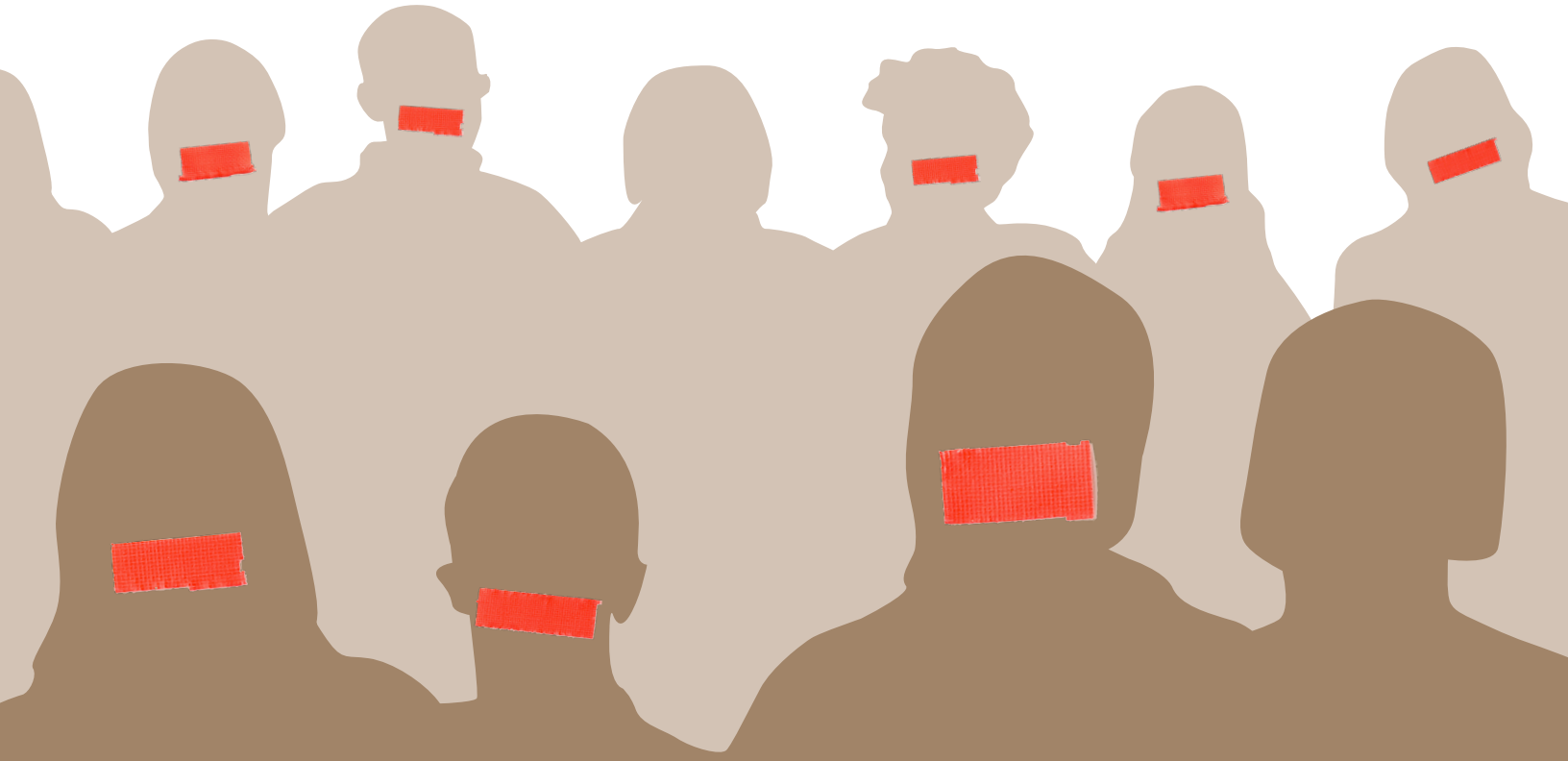

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Table of Contents

Executive Summary

Disclosure, proponents claim, produces a better functioning democracy: By requiring groups that advocate for or against issues on the ballot to reveal their funding sources and how they spend their money, voters gain valuable insights into the issues themselves and make more informed voting decisions. Even better, they say, it is a policy that comes with few costs; it is "merely" disclosure.

But what if these claims are wrong? In fact, as this report shows, the research on the effects of mandatory disclosure for ballot issue campaigns finds exactly that. Disclosure does little to help voters and imposes substantial costs on those wishing to participate in democratic debate.

To assess the informational benefits of disclosure, this report uses an experiment to test whether disclosure improves voters' knowledge of where interest groups stand on a ballot issue. Results reveal it does not:

- Voters have little interest in disclosure data. Among 15 information sources a subset of participants could choose to view—12 newspaper articles, a voter guide and two campaign ads—those referencing disclosure data were by far the least viewed.
- Viewing disclosure information had virtually no impact on participants' knowledge, but viewing the voter guide did.

These results show that voters would be just as capable of voting in ballot issue elections if no disclosure of contributions and expenditures were required. In a society where information about politics is everywhere, any additional benefit from disclosure laws is close to zero.

Moreover, earlier research has established that disclosure burdens would-be speakers with cumbersome and complicated red tape and puts them at risk for legal sanctions (or worse) for mistakes. Research also shows that loss of privacy and fear of retribution for backing a controversial position deter contributions to ballot issue campaigns.

Surprising as it may seem, the current regime of government-forced disclosure does virtually nothing to improve public discourse on ballot issues. Indeed, disclosure stifles debate by making it harder for people to organize and participate in the process. If, as even disclosure proponents agree, the goal is a freer, more robust democratic process, lifting burdensome disclosure laws is the place to start.

Introduction

Imagine that you had to send a government official a note each time you did something political, whether it be attending a rally, volunteering on a campaign, posting to a blog or even conversing with friends over drinks. Now imagine that this information would be made public by the government. Would your conversations with friends change? Would your other political activities change? For many of us, the answer would be yes.

Of course, in most cases you can volunteer on a political campaign without registering with the government. You can talk with friends without registering with the government. But when you decide to spend money on politics, whether by contributing to a candidate or a group or even collaborating with like-minded individuals on political activities, everything changes. You often are required to file complicated forms with the government. Your personal information, including your home address and employer, is likely to be posted on the Internet in handy searchable databases. The release of this information has led to lost jobs, vandalism and even violence.[1]

You might think there would be a good reason for collecting this information, but in the case of ballot issues, the justification is surprisingly thin. In the case of contributions to the campaigns of candidates for office, the U.S. Supreme Court has determined that the fear of actual or perceived corruption justifies the disclosure of contributions to candidate campaigns.[2] In the case of ballot issue campaigns, however, the "candidate" is a policy position, and no such anti-corruption rationale exists.

Those who want to justify disclosure for ballot issue campaigns instead rely on other rationales, claiming that voters can make better decisions if they know who supports these campaigns. Disclosure is thought to be the most straightforward way to learn this information. If you know that Pepsi contributed funds to fight the "Ban Soft Drinks" ballot issue, the argument goes, you are now better-positioned to determine where you stand on the measure.

Another, related rationale is that the government must protect voters from misleading information in campaigns. For instance, disclosure proponents would argue that Pepsi should not be able to anonymously create a "shadowy" group with a name like Support Children's Health that advocates against the "Ban Soft Drinks" initiative. Disclosure laws allegedly prevent voters from being duped by an ad about the health benefits of soft drinks paid for by Support Children's Health.

The fundamental premise of disclosure laws is that information about who contributes and spends money for political purposes can only benefit society, improving voter knowledge and holding individuals and groups accountable for their speech. With rare exception, the benefits of disclosure laws are viewed as so self-evident that data pointing to those benefits seems unnecessary.

But, as is so often the case when someone claims something is "self-evident," there is in fact no evidence to support the benefits of disclosure.

This pattern should be familiar to observers of campaign finance law: The benefits of campaign finance reform are taken to be self-evidently large, when in reality they often approximate zero. Meanwhile, the costs are assumed to be nonexistent when in reality they are substantial. This is true of public financing for campaigns, a reform which does little to improve competitiveness or faith in government and can, as in the case of the recently overturned Arizona "Clean Elections" law, impinge on speech in an unconstitutional manner.[3] And it is true of disclosure laws for ballot issue campaigns, the topic of this study.

This report is a lesson in contrasts. While the costs of disclosure have been established, the benefits of disclosure have always been *assumed* to exist. But when actual research on the benefits of disclosure is considered, the picture that emerges is very different.

This report is organized into two main parts. The first part discusses several studies demonstrating the *costs* of campaign disclosure.

DISCLOSURE FACTS

RED TAPE BURDENS AND DETERS SPEECH

An experiment where 255 people were asked to complete disclosure forms for a grassroots ballot issue campaign found:

93% Did not know citizen groups had to file government paperwork to speak about a ballot issue

0 People correctly completed the forms

41% Tasks on forms were correctly completed

89% Said red tape and threat of legal penalties for mistakes would deter political activity

Source: Milyo, J. (2007). Red tape: Strangling free speech and political debate. Arlington, VA: Institute for Justice.

It then shows that in a society where information about politics is everywhere, the informational *benefits* of disclosure laws are close to zero. The bottom line: The results do not favor the continuation of disclosure laws for ballot issues.

The Burdens of Disclosure

Red Tape

Campaign finance disclosure laws place burdens on individuals who work together to speak out on a ballot issue. If they spend all but a minimal amount or receive virtually any contributions (monetary or in-kind) in support of their efforts, they enter a byzantine world of complicated paperwork and onerous regulations. Unless they are experts in campaign finance law, or can afford to hire one, these would-be speakers run the risk of making errors that could cost them thousands of dollars and lead to damaging lawsuits.

University of Missouri economist Dr. Jeffrey Milyo demonstrated just how confusing these regulations can be. Milyo asked 255 ordinary citizens to complete the paperwork required to speak as a group on ballot issues in one of three states—Colorado, California or Missouri.[4] Participants included non-student adults aged 25 to 64 in Columbia, Mo., as well as graduate and undergraduate students at least 20 years of age at the University of Missouri.

Milyo surveyed participants in advance of the experiment to gauge their knowledge of disclosure requirements. Only seven percent of the respondents were aware that groups of citizens had to file forms with the government to speak as a group on a ballot issue. In other words, citizens wishing to participate in the political process may unwittingly break the law and expose themselves to government fines, government lawsuits and even lawsuits from political opponents.

This threat is not hypothetical. Six residents of Parker North, Colo., banded together in 2006 to oppose the annexation of their neighborhood

into a nearby town. They, like the 93 percent of those surveyed in Milyo's study, were unaware that their loose collaboration required them to register as an "issue committee." Supporters of the annexation, seeing an opening thanks to Colorado's campaign finance disclosure laws, sued these residents for failing to register and keep track of their spending on materials like poster board and markers.[5]

Milyo's experiment shows that compliance with disclosure laws is challenging even for citizens who are aware of them. Milyo presented the 255 participants with a scenario for a group called "Neighbors United." This fictional group received a few contributions—some large, some small, some anonymous, some named, some monetary and some non-monetary—and made only one expenditure. This pattern realistically replicates that of a small group of like-minded citizens as opposed to a large interest group. The experiment was not designed to set the participants up for failure. It asked them to do no more than would be expected of a typical citizen participating in a ballot issue campaign.

Yet fail they did. Overall, the mostly college-educated respondents completed just 41 percent of tasks correctly. Respondents had trouble reporting non-monetary contributions, such as a discount given by a T-shirt maker, as well as handling anonymous donations and aggregating contributions by donor. Only one participant asked to complete the Missouri forms realized that a campaign event resulting in $15 of contributions requires the filing of a statement providing details about the event.

In a subsequent debriefing, nearly all participants expressed frustration with the forms—"Worse than the IRS!" wrote one respondent—and a sizable majority believed that knowledge of the red tape associated with disclosure would deter citizens from participating in the political process.

These results are consistent with a basic tenet of economics: When something is taxed, you get less of it. Disclosure laws that burden citizens with confusing reporting requirements and the

DISCLOSURE STORIES

RED TAPE TIES UP FLORIDA CITIZEN GROUP

By Paul Sherman, Institute for Justice staff attorney

Should grassroots groups of citizens have to comply with campaign finance laws that the U.S. Supreme Court has held are unconstitutionally burdensome for corporations like General Motors and unions like the AFL-CIO?

For too many groups, that is the reality of political participation, as Nathan Worley, Pat Wayman, John Scolaro and Robin Stublen learned when they joined together to oppose an amendment to the Florida Constitution in 2010.

The target of their concern was Amendment 4, which was popularly known as the "Hometown Democracy Amendment." Amendment 4 would have required that municipalities that adopt or amend their local comprehensive land-use plan submit the changes to a referendum of the voters.

Nathan, Pat, John and Robin thought Amendment 4 was an affront to property rights that would stifle economic growth in Florida—and they wanted other voters to hear that view. So the group decided to pool their resources and run ads on their local talk radio station, urging the public to vote against the amendment. But, thanks to Florida's campaign finance laws, such spontaneous political expression is all but impossible.

For Nathan and the others, going forward with their plans would have triggered a mountain of red tape, because under Florida law, anytime two or more people get together to advocate the passage or defeat of a ballot issue and raise or spend more than $500 for the effort, they become a fully regulated "political committee."[1]

What does this entail? First, Nathan and the others would have to register with the state and establish a separate bank account.[2] Then the group could run its ads, but it would have to keep meticulous financial records and report all activity.[3] And unlike most states, Florida does not place any lower limit on contributions and expenditures that have to be reported—even a one-cent contribution must be separately itemized, including the contributor's name and address, and reported to the state.

Wading into such a complicated area can be dangerous and the penalties can be severe. If Nathan and the others speak without complying with the law, they can face civil or criminal fines of up to $1,000 per violation and even up to one year in jail.[4]

As Pat Wayman said, "These laws make politics inaccessible to common citizens; you need to hire an attorney to make sure you don't get in trouble with the government. We shouldn't have to file any paperwork, or hire accountants or campaign finance lawyers, just to exercise our First Amendment rights."

Rather than remain silent, Pat and the others have chosen to fight back. In October 2010 they filed a federal lawsuit to strike down Florida's burdensome campaign finance laws, relying on a 2010 Supreme Court decision that held that similar laws were unconstitutionally burdensome for corporations and unions.[5]

1 Fla. Stat. § 106.011(1).
2 Fla. Stat. §§ 106.03(1)(a), .021(1).
3 Fla. Stat. §§ 106.06(1), .06(3), 07(4)(a).
4 Fla. Stat. §§ 106.19, .265.
5 *Citizens United v. FEC*, 130 S. Ct. 876, 897-98 (2010).

DISCLOSURE STORIES

REPORTING ERRORS BRING CRUSHING FINES

By Paul Sherman, Institute for Justice staff attorney

In 2002, Carolyn Knee volunteered her time and energy to campaigning for a local ballot issue that would allow San Francisco to break its ties with power company Pacific Gas & Electric Co. Knee had been a legal assistant for 25 years, but had no experience with campaigning or with campaign finance laws, so she hired an accountant to help her with the bookkeeping.

Five years later—with the election over and the ballot issue she championed defeated—the records from Knee's now-defunct ballot issue committee were subject to a random audit. Despite having hired an accountant and making her best effort to comply with the law, the audit discovered several reporting errors. As a result, Knee, a retiree living on a fixed income, found herself threatened with over $26,000 in fines.

Knee is not the first to be hit with exorbitant fines by the Fair Political Practices Commission (FPPC), the agency charged with enforcing California's campaign finance laws. Nor is she likely to be the last. California's campaign finance laws are so complex that errors—and fines—are practically inevitable.

The FPPC itself reached this conclusion in a 2000 study titled "Overly Complex and Unduly Burdensome: The Critical Need to Simplify the Political Reform Act of 1974 in California."[1] As part of that report the FPPC conducted an experiment that asked individuals with different levels of campaign experience to fill out campaign finance disclosure forms. As in Milyo's experiment (see page 4), participants performed miserably. The FPPC found that "[e]ven participants with backgrounds in campaigns" could not fill out the forms "without making multiple mistakes."[2]

Thankfully, Knee was ultimately able to settle the charges against her by paying a $267 fine. Not everyone gets off so easy. In 1995, Californians Against Corruption was slapped with an $808,000 fine for reporting errors—at that point the largest fine in the agency's history—despite having spent only $103,091 in support of a recall campaign.[3]

Although Knee escaped financial ruin, her experience was enough to convince her not to get involved in political campaigns in the future. As she said, "I would never do this again. It totally discourages grassroots" campaigns.[4]

1 Lucas, S. S. (2000). Overly complex and unduly burdensome, Retrieved December 23, 2006 from http://www.fppc.ca.gov/pdf/McPherson.pdf.

2 Lucas, 2000, p. 69.

3 Doherty, B. (1996). Disclosure flaw, Retrieved August 2, 2011 from http://reason.com/archives/1996/03/01/disclosure-flaw.

4 Witherell, A. (2007). The ethics of ethics, Retrieved August 2, 2011 from http://www.sfbg.com/2007/07/03/ethics-ethics.

specter of fines and lawsuits are a de facto tax on speech. Cumbersome reporting requirements represent a very real threat to political participation.

Fear Factor

Disclosure laws place a second set of burdens on citizens. Individuals who contribute to ballot issue campaigns will have their name, address and often their employer reported publicly for donations above a certain (typically very low) threshold.[6] For somebody who is publicly active in politics, this requirement may be a minor nuisance. But for somebody who wants to support a cause privately, government-forced disclosure may present a significant barrier.

Such privacy concerns are heightened by easy access to information on the Internet. Beyond the information directly available from the government, several websites aggregate donors' identities and contributions in ways that harness the latest technology. The Huffington Post's Fundrace site uses Google Maps so viewers can see who in their neighborhood has made political contributions.[7] There is now even a program that scans e-mail inboxes and then "allows you to see the political contributions of the people and organizations that are mentioned in the e-mails you receive."[8]

Concern about privacy comes not just from political views being revealed, but also from personal contact information being posted online. Gigi Brienza learned that lesson the hard way when a simple campaign donation landed her on the target list of a domestic terrorist group (see sidebar p. 7).

Disclosure laws, in other words, make it much more difficult for people to support policy positions anonymously. Even if they do not fear retaliation, they may simply desire the same privacy for contributions that their vote receives at the ballot box.

This "fear factor" acts as another tax on participation and may lead citizens to forgo giving to ballot issue campaigns. When Dr. Dick Carpenter of the University of Colorado and the

Institute for Justice asked survey respondents whether disclosure of their name and address would lead them to think twice about contributing, about 60 percent said that it would.[9] When asked why, respondents cited retaliation fears more than any other reason except a general desire for privacy.[10]

Support for disclosure laws generally varies depending on whether the question is framed as the disclosure of other people's information or one's own, what Carpenter dubs the "disclosure for thee, but not for me" phenomenon.[11] Eighty percent of voters favored the disclosure of contributors' identities,[12] but only 40 percent favored disclosure of their contributions if *their* name and address is revealed, and even fewer—just 24 percent—favored disclosure if their employer is revealed.[13] Respondents expressed concern that their job could be in jeopardy or that they could face retaliation from a union for voting on "another side" of the issue.[14]

In the abstract, then, citizens may favor disclosure, but when the consequences of disclosure are personalized, their opinions change dramatically. If we are concerned about disclosure's impact on political participation, what matters is not whether people like the idea of disclosure in the abstract, but whether it causes them to participate less. Carpenter's survey and the experiences of people like Gigi Brienza suggest that it does.

Purported Benefits of Disclosure

Turning to potential benefits, campaign finance disclosure laws for ballot issues, unlike for candidate campaigns, cannot be justified on corruption or appearance of corruption grounds, since by definition ballot issue campaigns are about issues, not candidates. The justification for these laws, if provided, relies almost exclusively on the purported *informational* benefits of disclosure. This section reviews these claims and shows why there is good reason to doubt them. The next section presents new results from an experiment

DISCLOSURE STORIES

SINGLE CONTRIBUTION EXPOSES DONOR TO THREATS

By Paul Sherman, Institute for Justice staff attorney

It is well known that campaign finance disclosure can lead to retaliation for making contributions to unpopular candidates or causes. What is less widely recognized is that campaign finance disclosure can lead to other types of harassment that are unrelated to a donor's political views—and even more dangerous.

Consider Gigi Brienza. In 2004 she attended a speech given by then-presidential candidate John Edwards. She was inspired by his message and decided to make a $500 political contribution to his campaign.

Two years later, she found herself the target of an animal-rights terrorist group. And, according to the FBI, campaign finance disclosure made it possible.

Brienza was targeted by a group called Stop Huntington Animal Cruelty (SHAC). SHAC's mission is to put an animal-testing laboratory called Huntington Life Sciences out of business by any means necessary—legal or illegal. SHAC does not just target Huntington, it also targets employees at companies that do business with Huntington, companies like pharmaceutical manufacturer Bristol-Myers Squibb, where Brienza worked at the time.

Because Brienza's contribution to Edwards' campaign was greater than $200, federal law required that her name, address, occupation and employer be disclosed on the website of the Federal Election Commission (FEC), where that information was accessible to anyone with an Internet connection. This was enough to put Brienza and about 100 of her colleagues in SHAC's crosshairs.

Using the FEC's database, SHAC was able to search campaign finance records for the home addresses of people who worked for companies affiliated with Huntington. SHAC used this disclosure data to generate a list of "targets," which it posted under the ominous heading "Now you know where to find them."

Luckily, Brienza was never attacked, and many of SHAC's leaders were subsequently arrested. But her experience demonstrates that, particularly in the Internet era, there are social costs to disclosure that go far beyond partisan political retaliation. The abuse of disclosure data by groups like SHAC is a threat that cannot be predicted or protected against, except by citizens restricting themselves to making contributions smaller than the legal threshold for disclosure.

Sadly, this is what Brienza now feels compelled to do. After recounting her story in *The Washington Post* she concluded, "If I am moved to write a check [in the future], I will limit my contribution to $199.99: the price of privacy in an age of voyeurism and the cost of security in an age of domestic terrorism."[1]

1 Brienza, G. (2007). I got inspired. I gave. Then I got scared, Retrieved August 2, 2011 from http://www.washingtonpost.com/wp-dyn/content/article/2007/06/29/AR2007062902264.html.

DISCLOSURE FACTS

FOR THEIR OWN CONTRIBUTIONS, PEOPLE PREFER PRIVACY

A survey of more than 2,000 citizens in six states with ballot issue disclosure laws found:

80% Favor disclosure of contributors to ballot issue campaigns

40% Favor disclosure of *their own* name and address if they contribute to a ballot issue campaign

24% Favor disclosure of their employer if they contribute to a ballot issue campaign

60% Would "think twice" about contributing to an issue campaign if their name and address is revealed

Source: Carpenter, D. M., II. (2007). Disclosure costs: Unintended consequences of campaign finance reform. Arlington, VA: Institute for Justice.

that further challenges the conventional wisdom on disclosure.

Do Voters Want Disclosure Information?

Voters can obtain disclosure-related information in one of two ways. They can access a government or private database, typically now web-based, and review contributions and expenditures. Or they can obtain disclosure information indirectly from the media, campaigns and other "opinion leaders" or "elites." A newspaper, for instance, may report on which interest groups have spent funds in support of or opposition to a ballot issue.

There is good reason to question whether voters would ever access this information directly from state disclosure websites. Voters have an incentive to be "rationally ignorant," gathering very little information in making voting decisions. Anthony Downs,[15] who first developed this idea, noted that political information gathering is time-consuming, so people will do it only if the benefits outweigh the costs. As Downs found, for most voters gathering information is typically not worth the cost in time spent.[16]

The idea of "rational ignorance" is not a comment on the intelligence or open-mindedness of voters. It simply acknowledges that people have many demands on their time, and for many, spending time researching political issues may not top the list. So they make a voting decision based on what they already know.

Thus, the notion that a voter will sit down at a computer and search databases for information on interest groups strains credulity. It is no surprise, then, that the Carpenter survey found that less than half of respondents claimed to have awareness of disclosure laws and only a third claimed to know where to access disclosure information.[17]

Since direct acquisition of disclosure information is unlikely, the second means of information acquisition—"information entrepreneurs"—is the typical focus for reformers.[18] Information entrepreneurs include the news

media, think tanks and other groups that disseminate information. Certainly the news media reports on campaign finance disclosure, and of course candidates and interest groups reference campaign finance information in advertising. But how prevalent, really, is this kind of activity for ballot issues? The answer, according to a review of campaign information in Colorado's 2006 ballot issue election, is not much.

Only 4.8 percent of newspaper articles, editorials and letters to the editor; think tank and nonprofit material; state-produced documentation; and campaign-generated documentation referenced disclosure information. That figured dropped to 3.4 percent in the two weeks leading up to the election.[19]

This finding is not an anomaly. Professor Raymond La Raja examined articles for state-level campaign finance from 194 newspapers covering all 50 states from 2002 to 2004. He found that each newspaper averaged only about three stories per year regarding campaign finance.[20] And less than 20 percent of those stories fell into the category of "analysis"—the category that would provide information about contributors to campaigns.[21]

These studies establish that information about who contributes to ballot issues and other statewide races is not, in fact, used extensively by information entrepreneurs in communicating with voters. The experiment reported below complements this research by directly assessing voters' interest in and use of disclosure-related information in the form it is most likely to be acquired—from elites. The results of the experiment buttress the above findings by showing that voters do not demand disclosure information.

Does Disclosure Help Voters Vote?

In a second claim, disclosure advocates assert that "improving voter competence is the most persuasive rationale" for disclosure laws regarding ballot issues.[22] One legal scholar writes that "the real role of disclosure is voter information, not corruption-deterrence," arguing, "[i]nformation about the contributions to and

DISCLOSURE STORIES

DISCLOSURE ABETS POLITICAL INTIMIDATION

By Paul Sherman, Institute for Justice staff attorney

Like many people, professor of law and former congressional candidate James L. Huffman had always assumed that public disclosure of political contributions was a good thing. But Huffman's opinion changed when he ran for office as the Republican nominee for U.S. Senate in Oregon in 2010. As Huffman put it, "The reality is that public disclosure serves the interests of incumbents running for re-election by discouraging support for challengers."[1]

How does it work? By giving incumbents the power to intimidate even small-dollar donors:

> A challenger seeks a contribution from a person known to support candidates of the challenger's party. The potential supporter responds: "I'm glad you're running. I agree with you on almost everything. But I can't support you because I cannot risk getting my business crosswise with the incumbent who is likely to be re-elected."[2]

Huffman is not the first political challenger to experience firsthand how disclosure can chill political participation to the benefit of incumbent candidates. In 2008, West Virginia Attorney General candidate Dan Greear voiced similar concerns during his campaign to unseat incumbent Attorney General Darrell McGraw, noting, "I go to so many people and hear the same thing: 'I sure hope you can beat him, but I can't afford to have my name on your records. He might come after me next.'"[3]

Incumbent candidates are not the only ones who use disclosure information to retaliate against their political opponents. The 2008 federal elections saw the creation of "Accountable America," a group that pledged to "confront donors to conservative groups, hoping to create a chilling effect that will dry up contributions."[4]

Unfortunately, legal standards adopted by the U.S. Supreme Court do little to protect against political retaliation. The Court has held that individuals and groups may be exempt from disclosure only if they first demonstrate a "reasonable probability" that disclosure "will subject them to threats, harassment, or reprisals from either Government officials or private parties."[5]

But as Supreme Court Justice Clarence Thomas has observed, this supposed protection is "a hollow assurance."[6] In practice, it is almost impossible to meet the "reasonable probability" standard unless a group or individual has already suffered retaliation. The result, as Justice Thomas notes, is "a view of the First Amendment that subjects citizens of this Nation to death threats, ruined careers, damaged or defaced property, or pre-emptive and threatening warning letters as the price for engaging in core political speech, the primary object of First Amendment protection."[7]

1 Huffman, J. L. (2011). How donor disclosure hurts democracy, Retrieved August 2, 2011 from http://online.wsj.com/article/SB10001424052748704415104576250503491062220.html.

2 Huffman, 2011.

3 Strassel, K. A. (2008). Challenging Spitzerism at the polls, Retrieved August 2, 2011 from http://online.wsj.com/article/SB121754833081202775.html.

4 Luo, M. (2008). Group plans campaign against G.O.P. donors, Retrieved August 2, 2011 from http://www.nytimes.com/2008/08/08/us/politics/08donate.html.

5 *Citizens United v. FEC*, 130 S. Ct. 876, 914 (2010).

6 *Citizens United*, 130 S. Ct. at 982 (Thomas, J., concurring in part and dissenting in part).

7 *Id.* (internal quotation marks omitted).

DISCLOSURE FACTS

MEDIA MAKE LITTLE USE OF DISCLOSURE INFORMATION

4.8% Newspaper articles, nonprofit material and government and campaign publications on issues in 2006 Colorado election that referenced disclosure information

3 Average number of stories on state-level campaign finance per year per newspaper in study of 194 newspapers nationwide from 2002 to 2004

Sources: Carpenter, D. M., II. (2009). Mandatory disclosure for ballot-initiative campaigns. *Independent Review*, 13(4), 567-583; La Raja, R. J. (2007). Sunshine laws and the press: The effect of campaign disclosure on news reporting in the American states. *Election Law Journal*, 6(3), 236-249.

expenditures by groups supporting or opposing a measure can be quite helpful in understanding the likely consequences of what may be a difficult-to-parse measure."[23]

More simply, the argument is that ballot issues can be confusing and voters may have limited knowledge about the issues being considered. So knowing the identities of supporters, thanks to disclosure, can provide voters "cues" or "shortcuts" as to how to vote, especially if the "right" information is disclosed.[24]

For example, if voters know that the Sierra Club or the NRA backs a measure, this provides information about its impact, even if voters do not know much else. For cues like these to be useful, proponents argue, three things must be true. First, voters must correctly associate the group with a viewpoint—the Sierra Club with a pro-environment view and the NRA with a pro-Second Amendment view. Second, the group must be viewed as credible. Finally, voters must know the groups backing or opposing a measure in time to affect their decisions.[25]

So far, this is a plausible story. However, in the leap from cues to government-forced disclosure, the story runs into trouble. For disclosure advocates, the state is justified in casting a wide disclosure net because we cannot know in advance which groups that contribute to campaigns will provide useful cues.[26] All must be disclosed, because some of the information could be useful to voters.

There are several problems with this claim. First, notice that cues will be most helpful from organized interest groups with well-known or easily discovered viewpoints. Such groups typically work to promote their views in the media and directly to voters, so they provide cues for voters *without disclosure*. Second, and related, there is a wealth of information available to voters other than campaign finance records. It is not clear that mandatory disclosure adds to that. Third, a lot of disclosure information will provide no useful cues at all, most especially the identities of individual donors unknown to most people.

So the real question is not whether cues are helpful—some may be—but whether *mandatory disclosure* adds useful information beyond what would be available in a world without these laws. In the language of economics, what are the *marginal benefits* of disclosure? That is the question my experiment is designed to answer. But earlier research and three examples give reason to doubt disclosure's marginal benefits.

Insurance Reform in California: Cues Do Not Require Disclosure

Political scientist Arthur Lupia has conducted the seminal statistical work in the area of voter cues on ballot issues.[27] Lupia surveyed voters on five ballot measures dealing with insurance reform in California. He found that knowing the positions of the insurance industry or trial lawyers on the measures enabled voters to vote as if they knew more about the measures than they actually did.[28]

This suggests that cues are sometimes useful, but it does not speak to the marginal benefits of disclosure. Although Lupia's research is often used to justify campaign finance disclosure laws, the positions of trial lawyers and the insurance industry on these propositions would presumably be easy for media and other elites to discern without disclosure of campaign contributions or spending. And it is from these sources that less informed voters are likely to be getting their information.

In fact, the California Ballot Pamphlet for 1988, which contained pro and con statements for the five ballot issues discussed in Lupia's study and a description of the law's impact, provided a wealth of information for voters, whether they read it themselves or received the information indirectly from opinion leaders.

Since California, like all ballot issue states, provides disclosure data, many of the pro and con arguments in the pamphlet referenced this data. Importantly, however, the disclosure information provided little *additional* information for voters beyond the other information in the pamphlet. For example, in the "Argument for Proposition 100," advocates claim that competing propositions on the ballot were written by insurance companies. In a rebuttal, opponents noted that Proposition 100 was written by trial lawyers. Opponents also mentioned that trial lawyers were funding Proposition 100 efforts, but this information is superfluous once we know that opponents of Proposition 100 align it with trial lawyers. Overall, then, the *marginal* benefits of disclosure information are probably close to zero in Lupia's study.

Land Development in Florida: Flood of (Non-disclosure) Information

Turning to a more recent example, consider Amendment 4 from Florida's 2010 ballot. This ballot issue dealt with land development issues. Disclosure advocates argue that disclosure is necessary because, otherwise, voters would be ignorant about where interest groups stand on the issue and would be unable to use this information to make informed voting choices.

But consider the results of a search for {"Amendment 4" Florida} using Google's search engine. Clicking links based on this search, I learned that a group created by the Chamber of Commerce, Vote No on 4, built a coalition of 320 members, 4,000 volunteers and 15,000 Facebook fans in opposition to the ballot issue.[29] I also learned that the Florida Chapter of the American Planning Association opposed the ballot measure.[30] A follow-up search of {"vote no on 4" and coalition members} led me to discover that Realtors opposed the ballot measure. Realtors were not shy about their opposition, engaging in several grassroots efforts, such as passing out stickers and posting yard signs.[31]

From looking at the website of one interest group involved in the Amendment 4 debate, Florida Hometown Democracy, I learned that the Audubon Society of the Everglades endorsed the amendment, as did Clean Water Action, Friends of the Everglades, the Sierra Club of Florida, FL Public Interest Research Group (Florida PIRG) and the Save the Manatee Club.[32] To be listed as an endorser on this website, a group or individual

DISCLOSURE STORIES

INSTEAD OF RESPONDING TO OPPONENTS, FILE A CAMPAIGN FINANCE COMPLAINT

By Steve Simpson, Institute for Justice senior attorney

Whether disclosure laws provide any useful information to voters is questionable. But the laws are clearly effective at one thing: arming political rivals with a weapon they can use against their opponents.

Most states allow citizens to file complaints against those they think have violated campaign finance laws. In some states, private citizens can actually prosecute alleged violators in court. This may sound like an effective enforcement mechanism, but as Colorado political strategist Floyd Cirulli once testified, "[A]nyone can use [campaign finance complaints] strategically to create an issue" in a political campaign.[1]

Indeed, David Flagg, the investigations manager for the Florida Elections Commission, estimates that 98 percent of the complaints the Commission receives are "politically motivated."[2] According to Flagg, campaign finance complaints are often filed by individuals seeking "to punish their political opponent" or to "harass that person or otherwise divert their attention from their campaign."[3]

That happened in Colorado in 2006 when a group of neighbors opposed the annexation of their neighborhood into the town of Parker (see page 4). After becoming annoyed at the group's comments in the local paper, proponents of the annexation filed a complaint against the group alleging violations of disclosure laws.[4] As one of the proponents later explained, "We did that action because those [annexation opponents] refused to debate us."[5]

California has one of the most onerous private complaint provisions in the country. The law not only allows private parties to file and prosecute complaints against others, it provides a financial incentive to do so by allowing complainants to keep a portion of the fines assessed for violations.

According to election law expert Robert Stern, who worked for the California Secretary of State and the Fair Political Practices Commission, private complaints were often baseless or brought to give one competitor in an election an advantage.[6] As a result, in June 2000, a bipartisan commission appointed by the governor of California recommended reforming the state's private enforcement provision because it could be used for political gain or to silence speech.[7]

Disclosure laws are complicated, making mistakes more likely, especially for people who lack the experience of political professionals. With private complaint provisions on the books, the costs of making a mistake often become prohibitive. The result, ironically, is that disclosure laws whose avowed purpose is to inform voters may actually end up silencing speech.

1 Deposition of Floyd Ciruli in *Sampson v. Coffman*, Case No. 06-1858, Dist. of Colo. (Oct. 4, 2007), at 37:19–39:1.

2 Deposition of David Flagg in *Worley v. Browning* , Case No. 4-10-423, No. Dist. of Fla. (April 18, 2011), at 19:6–15.

3 Flagg Dep. at 16:16–18:2.

4 Deposition of Patsy Putnam in *Sampson v. Coffman*, Case No. 06-1858, Dist. of Colo. (April 19, 2007), at 45:10–20; 79:15–80:6.

5 Solomon, B. P. (2010). Colorado campaign finance law ruled unconstitutional by Tenth Circuit Court of Appeals, Retrieved August 2, 2011 from http://www.huffingtonpost.com/2010/11/09/us-10th-circuit-court-of-_n_781187.html.

6 Deposition of Robert Stern in *Sampson v. Coffman*, Case No. 06-1858, Dist. of Colo. (Sept. 26, 2007), at 36:4–37:11.

7 Lucas, S. S. (2000). Overly complex and unduly burdensome, Retrieved December 23, 2006 from http://www.fppc.ca.gov/pdf/McPherson.pdf.

simply filled out a form giving consent. A financial contribution was *not* required.[33]

All of this information came from press releases or statements on the websites of groups involved in the initiative and was *not* related to government-forced disclosure. Yet, from these simple searches that took minutes to perform, I learned that environmentalists and interests opposed to development were on one side of the issue, and development supporters were on the other.

This flood of information available to voters and elites about the supporters and opponents of Amendment 4 without recourse to disclosure raises a fundamental question: To the extent that voters use the support and opposition of interest groups as cues to determine how to vote on a ballot issue, what *additional* benefit does knowing who contributed financial resources to the debate provide, *above and beyond what is already available without disclosure*? The answer is not much.

Ballot Issues in Colorado: "Information Entrepreneurs" May Not Translate Disclosure Information Into Useful—or Any—Cues

As part of a study of ballot issues in Colorado, discussed earlier in this report, Carpenter used two databases, LexisNexis and ProQuest, to gather all news media sources mentioning issues on the 2006 Colorado general election ballot. He also searched for mentions of ballot issues from think tanks and nonprofit organizations and did a general Internet search to discover other sources of information, including the state's voter guide. All told, from January 1 through November 7, 2006, voters had access to more than 1,000 pieces of information that dealt with ballot issues. Recall that only a tiny fraction of this information—less than 5 percent—is disclosure-related.

It is difficult to understand how this result can be squared with claims that disclosure is "vital" for voters in the ballot issue process. Is that tiny fraction of information *so* important that without it, the other 95 percent of information

is not helpful? Do the 320 editorial references to ballot issues not help voters enough? Do the 577 news article mentions leave out key pieces of information? Do the state's voter guide, think tank publications and campaign-generated material fail to inform?

Moreover, research shows that even when media outlets make use of disclosure, they do not do so in ways that are likely to provide voters with useful information. La Raja's study of candidate campaigns showed that, while "better" disclosure laws produce fewer stories focused on the "horse race" for money, "better" disclosure laws have little effect on the prevalence of analysis stories, including those that provide information about campaign contributions.[34] Some research even shows that people who are better educated—and therefore are more likely to read newspapers—do *worse* than less-well-educated respondents in estimating various aspects of campaign finance, including the amount of money raised in campaigns.[35]

If the news media rarely reports disclosure information, if "better" disclosure laws do not make for better reporting, and if those who read newspapers more actually know less about campaign finance, it is hard to see how disclosure is making voters more informed.

On top of that, cues may not be all that valuable for the average voter. Research on information processing in campaigns has found that heuristics (or short-cuts to decision making) help experts make "better" decisions, but do little for political novices.[36] Others express skepticism about cues, noting that people often lack sufficient baseline knowledge to use them effectively.[37]

Even supporters of disclosure stop short of a full-throated defense of the cue-based argument. One writes, "[M]ore study is required before we can reach conclusions about whether cues actually improve voter competence or work sometimes unexpectedly to undermine it."[38] Another expresses skepticism that more information is always better in disclosure: "[M]ore encompassing and stringent disclosure laws could, paradoxically, undermine…its voter-education value. Voters are unlikely to be able to process ever-increasing amounts of campaign finance information."[39]

Contrast this with the wealth of truly useful *non-disclosure* information available from my simple Google searches on Florida's Amendment 4. They turned up not only information about who was on which side of the issue, but also why. These interest groups were eager to explain the issue to voters as they saw it.

Would Voters Be Misled Without Disclosure?

Disclosure advocates' third claim is that disclosure keeps voters from being misled by "shadowy" interests. The essence of this claim is that so-called "veiled political actors" sometimes try to hide their financial support for or against a ballot issue. Disclosure advocates outline four concerns with such "veiled" interests:

1) They try to hide behind "patriotic or populist sounding names…so that voters will incorrectly assume that these groups support issues likely to be aligned with their interests."

2) They may be created to disguise "notorious" entities that fear voter backlash.

3) Organizations with broad name recognition and established credentials may be used as vehicles for other interests not normally associated with the organizations.

4) "Veiled" groups may want to hide funding that is coming primarily from out-of-state sources, since knowledge of significant out-of-state-funding could serve as a "cue that the issue is not necessarily in the best interests of the state or its citizens."[40]

What links together these four points is the notion that voters are being deceived *in ways that affect the voting decision* when they receive

information from groups hiding their financial support. The lack of information, or erroneous information, about who is backing a particular message may improperly alter how campaign information is processed. But, again, it is important to consider the role of such groups in a world without disclosure.

First, it need not be the case that decisions always improve due to the disclosure of funding sources behind ballot issues. A focus on the messenger may distract from the message.[41] Just because an interest is from out-of-state, for instance, does not necessarily imply that the position it espouses will not benefit voters. After all, a ballot issue may have been proposed by a well-organized interest that seeks significant benefits at a very high cost to unorganized taxpayers. If an opposing interest is out-of-state or "notorious" but has worthwhile information to share, it might have greater impact without the baggage associated with the interest group name or location.

In other words, when voters have biases for or against a particular group, anonymously provided information may be the better bet for effective information transmission about a ballot issue. A rule against anonymity disadvantages such groups, and the perspective they wish to share, in public debate.

Second, the media and opposing interests have an incentive to call into question statements by "veiled political actors," so such groups hardly get a free pass. In a world without government-forced disclosure, those groups that choose not to share the identities of financial supporters run the risk that opponents and voters will question their motives. The give-and-take of the political process and the watchdog role of the press exist even in a world with anonymous speech. Thus cues similar to those supposedly provided by disclosure would still be available.

For instance, suppose that a group called Californians for the Environment (CFE), secretly funded by a business that pollutes significantly, advocates against a ballot issue that would limit pollution. The Sierra Club or similar group would be very likely to call the CFE's motivations into question. The actions of the Sierra Club would provide a cue to voters here, and it is difficult to see what marginal benefits would exist for most voters from knowing that the CFE is funded by the polluting business, given the statement by the Sierra Club.

Moreover, donors may reveal their identities under pressure from others. For instance, nearly immediately after the onset of media scrutiny, Ed Conard identified himself as the funder of a corporation named W. Spann LLC that in turn contributed $1 million dollars to a "super PAC" supportive of presidential candidate Mitt Romney.[42]

A world without government-forced disclosure does not mean a world without information—or even a world without voluntary disclosure on the part of many groups. Thus, we come back to the central question: Does mandatory disclosure yield any *marginal benefits*, given all the other information available about ballot issues? That is the focus of my experiment.

Assessing Disclosure's Marginal Benefits

To examine the marginal benefits of disclosure, I designed an experiment where participants had the chance to vote on a ballot issue, but different groups were given access to different information about the issue. This design allowed me to assess three aspects of voter behavior in ballot issue campaigns. First, are voters interested in information about ballot issues? Second, and related, are voters interested in *disclosure* information? Third, does viewing disclosure information improve the ability of voters to identify the positions of interest groups on a ballot issue, once the other information they access is taken into account?

Recall that a central claim of disclosure advocates is that disclosure information provides

voters with valuable "cues" that will help them vote. But, if this information does not help voters better identify the positions of interest groups, it can hardly help them decide how to cast their ballot.

Research Method

Harris Interactive, a leading survey research firm, administered an online survey of 1,066 registered voters in Florida between October 14 and 25, 2010.[43] The survey featured a hypothetical ballot issue that respondents were told could appear on the ballot in Florida.[44] This ballot issue was based on an actual measure that appeared on Colorado's ballot in 2006. All respondents were presented with explanatory introductory text, followed by the text of the initiative, which addressed tax issues and illegal immigration.[45]

Then, respondents were randomly assigned to one of three groups, A, B or C.[46] Group A was immediately provided with the opportunity to vote yes, no or unsure on the ballot issue. Groups B and C were prompted as follows:

> Before being asked how you would vote on this issue if it were on the ballot in Florida, you will be given the opportunity to review information regarding the ballot issue. You can review as much or as little of it as you would like. Once you have finished reviewing this information, please click the forward arrow button below. You will then be asked how you would vote on this measure if it were on the ballot in Florida.

Groups B and C were then presented with headlines that linked to a series of newspaper articles, as well as links to a voter guide and two advertisements.[47] When a respondent clicked on any link, the entire document appeared on the screen.

Figure 1: Information Available to Groups A, B and C

LINKS AVAILABLE	GROUP A	GROUP B	GROUP C
Newspaper Articles and Editorials (no disclosure information)			
Floridians to Determine Fate of Wage Deduction For Illegal Aliens		●	●
Amendment 32 Targets Illegal Employers		●	●
Endorsements: Statewide Initiatives		●	●
Focus on IDs Questioned		●	●
Yes on 32: Voters Can Send a Message on Immigration		●	●
Amd 32 May Sound Good But It Is Full of Loopholes		●	●
Approval Urged on Immigration Issue		●	●
Ballot Issues Can Mislead		●	●
Amendment 32 Called Gesture		●	●
Overview of Miami Herald Positions on Statewide Issues		●	●
Voter Guide		●	●
Campaign Ads			
Yes on 32 (Defend Florida Now)		●	●
No on 32 (Color of Justice)		●	●
Newspaper Articles and Editorials (with disclosure information)			
Elite Donors Fuel Ballot Initiatives			●
Immigration Measures Make Ballot			●
	None	13 links mentioning 8 interest groups	15 links mentioning 13 interest groups

Figure 1 illustrates the information available to groups B and C. Group B was given access to 10 newspaper articles (randomly selected from those in the Colorado ballot issue study)[48], a voter guide based Colorado's and fictitious ads from two interest groups. Group C could access

the same information as Group B, plus two additional newspaper articles containing information that was almost surely obtained by the reporter through campaign finance disclosure (e.g., the amount of a particular contribution).[49]

Note that one-sixth of the articles available to Group C are disclosure-related. This far exceeds the prevalence of disclosure-related articles in a typical campaign[50] and therefore biases the study in favor of finding positive informational effects of campaign finance disclosure.

Thirteen interest groups and their positions on the ballot issue were mentioned in these documents. The names of the groups were usually fictitious but typically based on real groups in other states. As shown in Figure 1, Group B's documents mentioned eight of these groups, while those in Group C could view documents mentioning an additional five.

Once individuals in groups B and C were done reviewing this information, they were prompted to vote on the ballot issue. After voting, respondents were prompted as follows:

> Below is a list of groups that have taken or could take a position on this ballot issue. Based on your existing knowledge of the issue, as well as any information obtained during this survey, please assess the likely position of each group on this ballot issue.

For each group, the respondents were asked to indicate whether the group supported the initiative or opposed the initiative. Respondents could also indicate that they were unsure about the group's position.

Little Interest in Information, Particularly Disclosure Information

The first result of the experiment is that respondents with access to information about the ballot issue viewed very little of it. About 40 percent of respondents in groups B and C chose not to view any information at all. About 35 percent of those in groups B and C viewed one to three items. Of those who did view information, about half viewed at least one news article, and about 30 percent viewed the voter guide—the most popular single item. Respondents in groups B and C behaved virtually identically on all of these dimensions. Table 1 provides further details on the number of items viewed.

Since for most ballot issues voters have to make a greater effort to access information about the issue than in a survey setting, these results most likely overestimate the extent to which voters gather information about a ballot issue.

When we break down these actions further, we learn that campaign finance information, in particular, is not of much interest to respondents. Table 2 displays the percentage of respondents who viewed each item, by group. Of all items accessible by members of Group C, the two articles that contained campaign finance disclosure information were the least viewed. Since these articles were randomly inserted into the article list for each respondent, this effect is almost surely not due to placement of the articles.

One of these articles was headlined, "Elite Donors Fuel Ballot Initiatives," which clearly suggests that the story will discuss well-known donors. This is one of the most striking findings of the study. Respondents preferred to read any other material—another news article, a voter guide or an ad—rather than an article featuring campaign finance information. It is also telling that virtually no respondents, only about one percent, accessed only disclosure-related information.

Put another way, voters' "revealed preferences"—preferences shown through actions, not words—are for information that is not based on mandatory disclosure. As with the Carpenter survey, people may say they like information produced from disclosure, but their actions tell a different story. Moreover, respondents who read the "Elite Donors" article read three times more stories than those who did not (5.9 vs. 1.9), suggesting that voters who access campaign finance information are the least likely to need it to make informed choices.

Table 1: Survey Respondents View Very Little Information about Ballot Issues

		GROUP B (N=347)	GROUP C (N=345)
TOTAL ITEMS	0	39.5%	38.7%
	1	15.4%	16.5%
	2-3	18.1%	20.7%
	4 or more	27.0%	24.1%
	Average viewed	2.5	2.3
TOTAL NEWS ARTICLES	0	52.1%	49.5%
	1	16.6%	18.6%
	2-3	17.8%	19.6%
	4 or more	13.5%	12.3%
	Average viewed	1.6	1.5
VOTER GUIDE	Yes	32.2%	31.8%
	No	67.8%	68.2%
CAMPAIGN ADS	0	68.5%	70.9%
	1-2	31.5%	29.1%

Notes: Group B was provided access to no campaign finance information. Group C had access to this information. Figures, except for averages, are in percentages and sum to 100 within group for each category. Calculations are based on weighted figures.

Table 2: Survey Respondents are Not Interested in Articles Referencing Disclosure-Related Information

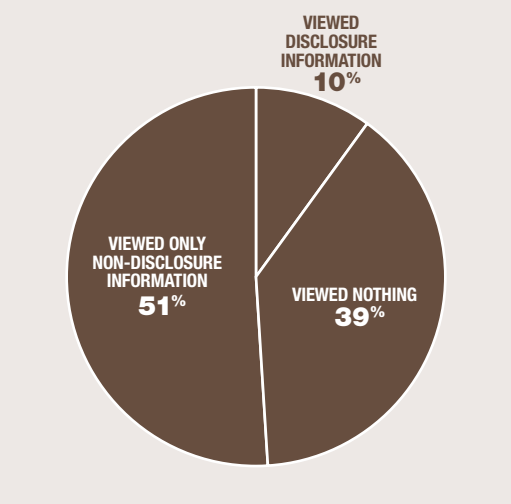
	GROUP B (N=347)	GROUP C (N=345)
NEWSPAPER ARTICLES AND EDITORIALS		
Floridians to Determine Fate of Wage Deduction For Illegal Aliens	13.7%	16.8%
Amendment 32 Targets Illegal Employers	20.5%	10.8%
Endorsements: Statewide Initiatives	15.0%	13.2%
Focus on IDs Questioned	16.3%	13.0%
Yes on 32: Voters Can Send a Message on Immigration	13.5%	17.4%
Amd 32 May Sound Good But It Is Full of Loopholes	16.6%	12.7%
Approval Urged on Immigration Issue	15.3%	10.5%
Ballot Issues Can Mislead	17.5%	15.3%
Amendment 32 Called Gesture	12.6%	14.9%
Overview of Miami Herald Positions on Statewide Issues	17.8%	11.3%
ARTICLES WITH DISCLOSURE INFORMATION		
Elite Donors Fuel Ballot Initiatives	n/a	6.9%
Immigration Measures Make Ballot	n/a	7.7%
VOTER GUIDE		
Voter Guide	32.2%	31.8%
CAMPAIGN ADS		
Yes on 32 (Defend Florida Now)	26.5%	26.8%
No on 32 (Color of Justice)	28.4%	25.6%

Notes: Group B was provided access to no campaign finance information. Group C had access to this information. Figures are the percentage of respondents in each group who viewed a given item. Calculations are based on weighted figures.

Figure 2 sums up the first two findings for Group C: Overall, nearly 40 percent of those with the opportunity to view information viewed none, while only 10 percent viewed disclosure information.

These results may explain why research by Carpenter and La Raja found that the media does not often supply voters with campaign finance information.[51] Perhaps voters simply do not demand it.

Figure 2: Viewing Choices of Group C: Little Interest in Disclosure Information



Virtually No Marginal Benefit from Disclosure

Now let's see how participants did in identifying the positions of interest groups. The simplest way to compare the success rates of groups A, B and C is to compare the average number of interest groups correctly identified by each group. Examining all 13 interest groups, respondents in A and B were virtually identical, correctly identifying an average of 4.8 interest groups. Respondents in Group C, who had access to disclosure-related information, correctly identified 5.7 out of 13 interest groups.

Seven groups are mentioned in disclosure-related articles, and of these seven groups, five are mentioned only in disclosure-related articles. Examining the seven interest groups mentioned in disclosure-related articles, respondents in Group A correctly identified 2.7 interest groups, with B respondents identifying 2.6 interest groups, and Group C members identifying 3.2 interest groups correctly.

Examining the five interest groups mentioned *only* in disclosure-related articles, the associated figures are 2.0, 1.8 and 2.3 for groups A, B and C, respectively. The general pattern, then, is that groups A and B look similar, with Group C having slightly more success.

These results are hardly an advertisement for disclosure laws. Still, disclosure proponents could say that Group C respondents were the best in identifying interest groups, and since Group C members were the only ones with access to disclosure-related information, it must be disclosure that is producing the results. This turns out to be incorrect.

The reason is simple. While only members of Group C had access to disclosure information, not all of them actually viewed it—in fact, most did not. To isolate the effect of viewing disclosure information, you have to account for differences in viewing behavior.[52]

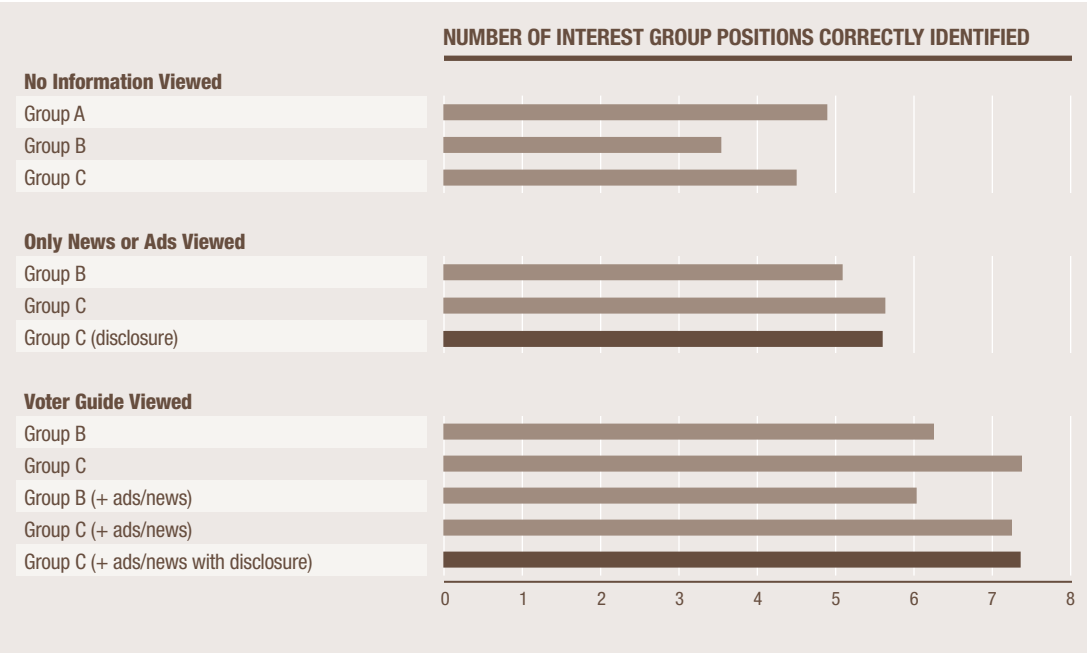
To do this, we can separate members of each group by the kind of information they viewed. In so doing, a very clear pattern emerges: Respondents who viewed the voter guide, regardless of what other information they viewed, did the best in identifying the positions of interest groups. Viewing disclosure information, by contrast, had virtually no impact.

In Figure 3, the first set of bars represents respondents who viewed no information. On average, they correctly identified 4.5 out of 13 groups. The second set of bars represents respondents who viewed only news or ads, and not the voter guide. They correctly identified 5.4 out of 13 groups. The third set of bars represents respondents who viewed the voter guide and possibly other information. They correctly identified 6.7 groups. These differences are almost surely not due to chance. In the language of statistics, they are statistically significant.

Moreover, note how imperceptible an effect disclosure information has on the success of Group C members, once the other information they view is taken into account. The two darker bars in Figure 3 refer to Group C members who viewed some disclosure-related information. They sometimes do slightly better, and sometimes slightly worse, than respondents who viewed comparable non-disclosure-related information, but these differences are trivial. In addition, the same pattern emerges if we look only at how well respondents identified interest groups only mentioned in disclosure-related articles.

In short, once you look at news, ads or, most importantly, the voter guide, there are virtually no informational benefits from looking at disclosure-related data. If there are no informational benefits from disclosure-related data, then logically this data cannot have an effect on voter competence. And since improvements in voter competence are the primary justification for disclosure laws, the case for disclosure is considerably weakened by these findings.

Figure 3: Interest Group Position Identification by Information Viewed: Voter Guide, Not Disclosure, Makes the Difference



What is the explanation for the minimal effect of articles referencing campaign finance disclosure information on the ability of respondents to correctly identify interest groups? First, it may be that news articles simply do not convey information in a manner conducive to recalling the positions of interest groups. Second, and related, the voter guide, which focuses just on the issues and not on other aspects of a campaign, such as the "horse race" (i.e., who is winning and who is losing), may provide voters with sufficient information to infer the location of many interest groups.

Regardless of the explanation, the results of the experiment should be no surprise, given everything we already know: Disclosure-related information is of little benefit for voters in ballot issue campaigns.[53]

Conclusion

The effects of campaign finance disclosure in ballot issue campaigns have not been extensively studied, in part because it is often taken as self-evident that disclosure must have positive informational consequences. This report, however, has established that voters would be just as capable of voting in ballot issue elections if no disclosure of contributions and spending were required. The evidence discussed here includes research conducted by other social scientists, my own original research, and even a simple Internet search. The key findings include:

- Voters' actions reveal that they are not interested in information about who contributes to ballot issue campaigns or the spending patterns of those campaigns.

- Disclosure information does little to help voters once all the other information available to them in a ballot issue campaign is taken into account.

- This lack of informational benefits is in contrast to the very real costs—in money, in time and in some cases personal safety—disclosure laws impose on citizens who wish to speak out regarding ballot issues.

These findings provide strong justification for jettisoning mandatory disclosure laws for ballot issue campaigns. So, what would a world without mandatory disclosure for ballot issues look like? Disclosure advocates fear a world of underground groups secretly controlling ballot issue campaigns and voters hamstrung by a lack of information about where interest groups stand on these issues. This report suggests otherwise.

There is wealth of information about ballot issues, and interest group positions on these issues, readily available to voters without recourse to disclosure information. This could be why voters are uninterested in disclosure information and why the media covers it rarely compared with other stories on ballot issues. Moreover, interests have an incentive to reveal their positions voluntarily, in part because if they do not, opposing interests will call their motives and identities into question.

Most importantly, Americans would *benefit* from the elimination of mandatory disclosure rules. Grassroots campaigns would be freed from burdensome red tape and the threat of legal sanctions for political activity. That means more participation and more debate. People would feel freer to give to their favorite causes without fear of unwanted exposure (or worse).

Surprising as it may seem, the current regime of government-forced disclosure does virtually nothing to improve public discourse on ballot issues. Indeed, disclosure stifles debate by making it harder for people to organize and participate in the process. If, as even disclosure proponents agree, the goal is a freer, more robust democratic process, lifting burdensome disclosure laws is the place to start.

Endnotes

1 McKinley, J. (2008, November 12). Theater director resigns amid gay-rights ire, *New York Times*, p. C1; McKinley, J. (2009, January 19). Marriage ban donors feel exposed by list, *New York Times*, p. A12.

2 See *Buckley v. Valeo*, 424 U.S. 1 (1976), for an articulation of the anti-corruption rationale for disclosure.

3 For an overview of the research on the failings of public financing laws, see Primo, D. M. (2010). What does research say about public funding for political campaigns? Retrieved July 14, 2011 from http://www.ij.org/about/3466.

4 Milyo, J. (2007). Red tape: Strangling free speech and political debate. Arlington, VA: Institute for Justice.

5 http://www.ij.org/index.php?option=com_content&task=view&id=1251&Itemid=165.

6 See Milyo, 2007, for details.

7 http://fundrace.huffingtonpost.com/.

8 https://inbox.influenceexplorer.com/.

9 Carpenter, D. M., II. (2009). Mandatory disclosure for ballot-initiative campaigns. *Independent Review*, 13(4), 567-583.

10 Carpenter, 2009, pp. 575-576.

11 Carpenter, D. M., II. (2007). Disclosure costs: Unintended consequences of campaign finance reform. Arlington, VA: Institute for Justice, p. 13.

12 A nearly identical proportion of Californians offer support for disclosure in the abstract (Baldassare, M., Bonner, D., Petek, S., & Shrestha, J. (2011). PPIC statewide survey: Californians and their government. San Francisco, CA: Public Policy Institute of California). However, unlike the Carpenter study, Baldassare et al. did not examine whether respondents' preferences change if the question is personalized.

13 Carpenter, 2009, p. 572.

14 Carpenter, 2009, p. 576.

15 Downs, A. (1957). *An economic theory of democracy*. New York: Harper Collins. In discussing candidate campaigns, Downs identifies two types of voters, strong partisans and those who are roughly indifferent between candidates of two parties. He points out that strong partisans are unlikely to change their vote as a result of new information. On the other hand, voters who view the two parties as nearly identical are not going to gain significant benefit from one party's candidate winning over another's.

16 These effects are exacerbated by the fact that the likelihood that a voter's ballot changes an election outcome is virtually zero. For the classic treatment of this issue, see Riker, W. H., & Ordeshook, P. C. (1968). A theory of the calculus of voting. *American Political Science Review*, 62(1), 25-42.

17 These figures are almost certainly inflated. Respondents on surveys often overstate their knowledge.

18 Garrett, E., & Smith, D. A. (2005). Veiled political actors and campaign disclosure laws in direct democracy. *Election Law Journal*, 4(4), 295-328. Garrett and Smith point to the role of "information entrepreneurs" in helping voters digest disclosure-related information, arguing that "disclosure statutes are vital to this endeavor… Mandatory disclosure statutes can be crafted so that they provide relevant information in a timely fashion and thereby allow information entrepreneurs to bring data to the voters' attention" (p. 297).

19 Carpenter, 2009, p. 578.

20 La Raja, R. J. (2007). Sunshine laws and the press: The effect of campaign disclosure on news reporting in the American states. *Election Law Journal*, 6(3), 236-249, p. 242.

21 La Raja, 2007, p. 243

22 Garrett and Smith, 2005, p. 296.

23 Briffault, R. (2010). Campaign finance disclosure 2.0. *Election Law Journal*, 9(4), 273-303, pp. 290 and 289.

24 Garrett and Smith, 2005, p. 297.

25 Garrett and Smith, 2005, p. 297.

26 Garrett and Smith, 2005, p. 325.

27 Lupia, A. (1994). Shortcuts versus encyclopedias: Information and voting behavior in California insurance reform elections. *American Political Science Review*, 88(1), 63-76.

28 Knowledge of the insurance industry's positions had a stronger effect than knowledge of trial lawyers' positions.

29 http://freemarketflorida.org/press-releases/399/.

30 http://www.onevoiceforflorida.com/forums/thread/b5f7678b-14cd-4ef0-afb9-a0486f7bea0e.

31 http://web.archive.org/web/20101231053537/http://www.floridarealtors.org/NewsAndEvents/article.cfm?id=250071.

32 http://floridahometowndemocracy.com/supporters_1.

33 http://floridahometowndemocracy.com/_data/files/EndorsementForm.pdf.

34 La Raja, 2007, p. 243. "Better" is measured using grades compiled by the Campaign Disclosure Project based on the "content and comprehensiveness" of the laws, the quality of electronic filing, the accessibility of the information, and "online contextual and technical usability" (La Raja 2007, 240).

35 Ansolabehere, S., Snowberg, E. C., & Snyder, J. M., Jr. (2005). Unrepresentative information: The case of newspaper reporting on campaign finance. *Public Opinion Quarterly*, 69(2), 213-221.

36 Lau, R. R., & Redlawsk, D. P. (2006). *How voters decide: Information processing during election campaigns*. New York: Cambridge University Press. Generally, the authors assert that "heuristics are definitely not the saving grace for the apathetic American voter. They have no broad, across-the-board ameliorative effect on the quality of the vote decision" (p. 252). The authors go on to state that heuristics can never eliminate "the role of political interest, experience, and knowledge" (p. 252) in explaining voter competence (what they term "correct voting").

37 Kuklinski, J. H., & Quirk, P. J. (2000). Reconsidering the rational public: Cognition, heuristics, and mass opinion. In A. Lupia, M. D. McCubbins, & S. L. Popkin (Eds.), *Elements of Reason: Cognition, Choice, and the Bounds of Rationality* (pp. 153-182). New York: Cambridge University Press. For further reading, see Delli-Carpini, M. X., & Keeter, S. (1996). *What Americans know about politics and why it matters*. New Haven, CT: Yale University Press. A recent experiment by political scientist Cheryl Boudreau argues for a "Gresham's Law of Political Communication" in which less credible sources of information crowd out the more credible sources of information, particularly for unsophisticated subjects. See Boudreau, C. (2011). Gresham's law of political communication: How citizens respond to conflicting information. Retrieved July 15, 2011 from http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1017977.

38 Garrett, E. (2003). Voting with cues. *University of Richmond Law Review*, 37, 1011-1048.

39 Briffault, 2010, p. 276. Briffault goes on to argue that instead, disclosure information should be "more like Census data or income tax returns, with the focus for the most part not on the activities of individual donors and more on the behavior of demographic or economic aggregates."

40 Garrett and Smith, 2005, pp. 305-306.

41 For an interesting discussion on this point, see Samples, J. (2010). The DISCLOSE Act, deliberation, and the First Amendment. Retrieved July 15, 2011 from http://www.cato.org/pubs/pas/pa664.pdf.

42 http://www.reuters.com/article/2011/08/09/us-campaign-finance-romney-idUSTRE77802R20110809.

43 Data for this survey were collected by Harris Interactive Service Bureau (HISB). HISB was responsible for data collection, and I was responsible for the survey design and all data analysis. All of the analyses below adjust for variations in demographics and party affiliation between sample subgroups, as well as between the sample and adult population in Florida. I expand on the analyses presented here in an academic paper, the current version of which can be found at http://www.rochester.edu/College/PSC/primo/experimentdisclosure.pdf.

44 All respondents were asked to provide demographic information, as well as party affiliation. Respondents were also asked seven informational questions designed to assess their political sophistication and knowledge. These questions are based on questions asked in the National Science Foundation-supported National Election Studies.

45 The introductory text read:

> Voters in Florida are able to vote directly on issues that appear on election ballots, in what are referred to as ballot issues. (These ballot issues are also referred to as initiatives and referenda.) Please read the following text of a ballot issue that could be considered in Florida, as it has been in other states.

The ballot issue text read:

> Shall state taxes be increased one hundred fifty thousand dollars annually by an amendment to the Florida constitution that eliminates a state income tax benefit for a business that pays an unauthorized alien to perform labor services, and, in connection therewith, prohibits certain wages or remuneration paid to an unauthorized alien for labor services from being claimed as a deductible business expense for state income tax purposes if, at the time the business hired the unauthorized alien, the business knew of the unauthorized status of the alien unless specified exceptions apply and, to the extent such a payment was claimed as a deduction in determining the business' federal income tax liability, requires an amount equal to the prohibited deduction to be added to the business' federal taxable income for the purpose of determining state income tax liability?

46 There were 374 respondents in group A, 347 in group B and 345 in group C.

47 The headline links to newspaper articles were randomly ordered for each respondent to eliminate any effects based on the order in which the articles appeared.

48 Carpenter, 2009.

49 In addition, the ads that Group C viewed included the words "paid for by" in front of the interest group name instead of a link to an interest group's website, which Group B's ads displayed. This is a distinction without a

difference, and it was imposed simply to eliminate any reference to campaign finance for Group B.

50 Carpenter, 2009.

51 Carpenter, 2009; La Raja, 2007.

52 Technically, since this was an experiment in which participants were randomly assigned into groups, we might only be concerned about the differences between groups based on assignment. However, participants' exposure to information was not determined simply by group assignment but also by their behavior once in the group (i.e., whether they read information provided). Therefore, it is important to control for differences in "dosages" in addition to group assignment. An easy analogy is medical drug experiments. In clinical trials for a new drug, researchers ideally try to randomly assign participants into at least two groups. One group receives the drug and another receives a sugar pill, but participants do not know which group they are in. By randomly assigning participants into groups, any differences between them can be traced to the drug. The intuition is that any differences among the groups should be "washed away" by random assignment. However, some may forget to take the drug. Others may take too much. So, researchers often adjust their estimates to account for the behavior of participants. The same principle applies to this survey. While individuals were randomly assigned into groups, which had varying access to information, it was up to individuals to decide what information they would view.

53 A critic might argue that my study does not satisfy the requirement of "external validity," meaning that voters in an actual ballot issue campaign would not behave as respondents in my survey did. External validity is always a concern in any experiment, but in this instance, my study probably *overstates* the effect of disclosure-related information. Disclosure-related articles are disproportionately represented in the information given to Group C members, compared to a real-world setting. Moreover, the information about the ballot issue is at the fingertips of respondents—no searching required. Finally, respondents are being asked to focus in particular on this ballot issue and are not distracted by the other campaigns that somebody in the "real world" would be. If respondents in this experimental setting are not reading disclosure-related ballot issue information, why should we expect that voters in an actual campaign environment would do so?

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