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## **Disclosure's unintended consequences**

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Pity Holly Paz, the senior IRS official who has become embroiled in the controversy over her agency's targeting of conservative non-profits. According to her attorney, Paz and her family have been subject to threatening phone calls and in-person visits, and her son was even followed home after being dropped off by the school bus.

And how might Ms. Paz's tormenters have located her? While a simple Google search may not suffice, one need not resort to expensive database services or NSA surveillance. Rather, the Federal Election Commission's campaign finance disclosure website reveals individuals' addresses, occupations, and employers within seconds, including information for Paz, who gave \$2,000 to Barack Obama's 2008 campaign. This would certainly not be the first time FEC data has been misused in such manner. In 2007, Gigi Brienza recounted in harrowing detail in the Washington Post how she was threatened by animal rights extremists. She was not targeted for donating to the John Edwards and Ralph Nader presidential campaigns; rather, the FBI determined that it was because FEC reports listed her employer as Bristol-Myers Squibb, which conducts animal testing.

The FEC database and similar state systems have become a popular resource for prospective employers, private investigators, nosy neighbors, and ne'er-do-wells. For giving as little as \$201 to a federal candidate, party, or PAC, civic-minded Americans are treated like sex offenders. In some states, giving even a single dollar to a candidate could subject the donor to public disclosure.

Using campaign finance data for stalking and snooping is only the tip of the iceberg of disclosure's many costs to both privacy and good government. Groups that are vexed by the billions of dollars spent on elections are the same ones who demand more disclosure. Yet, instead of tamping down spending, disclosure tends to contribute to a financial arms race. The political class awaits every candidate and party committee disclosure report with the anxiety of a junkie looking for his next hit. Coverage of fundraising and spending totals drives discussion of actual issues to the sidelines, as candidates are declared "frontrunners" or "also-rans" on the basis of their reported financials.

Of course, it's all fun and games until donors anger a public official. In New York, disclosure laws had been facilitating the attempted political comeback of former

Governor Eliot Spitzer, who resigned over a prostitution scandal. As the New York Post reported, groups opposing Spitzer's (ultimately losing) primary bid for New York City Comptroller were underfinanced because donors were loathe to be disclosed as opposing the notoriously vindictive ex-prosecutor. "People don't want to give money. People are afraid of retribution from Eliot Spitzer," said one political consultant. Given that campaign finance reports relieve politicians from the inconvenience of having to compile enemies lists themselves, why do we even bother having a secret ballot?

Disclosure-related harassment is a problem not only for supporters of candidates, but also for backers of political causes. Donors who gave to the campaign to ban gay marriage in California in 2008 were punished by a group that, ironically, called itself "Californians Against Hate." Notwithstanding its name, the group used disclosure information to incite the type of animosity and harassment against Proposition 8's supporters that Paz and Brienza have experienced.

Apologists for disclosure laws argue that case-by-case dispensations can be granted to mitigate this problem. But these exemptions tend to require evidence of a group's donors experiencing harassment in the first place. It is little comfort to be exempted from compulsory disclosure after one has already been threatened or victimized. Moreover, these exemptions tend to be administered selectively and unfairly. Recently, a New York State ethics agency granted a disclosure exemption for NARAL Pro-Choice, but not for a comparable pro-life group.

Although it has recognized that compulsory disclosure infringes on privacy and First Amendment rights, the Supreme Court has accepted three justifications for campaign finance disclosure laws: first, they inform the public about which interests are funding candidates; secondly, they deter corruption and the appearance of corruption; and third, they provide a means to detect violations of other campaign finance laws. It is absurd to think a mere \$200 donation would trigger these justifications.

The current federal campaign donor disclosure threshold of \$200 was set in 1979, at a time when one couldn't find donor information by simply using a smartphone, as can be done today. Merely adjusting the threshold for inflation would raise the level to \$650 today, which is still far lower than what is necessary to deter corruption or to inform the public about a candidate's major supporters. But at least it would be a start; the ridiculously low threshold for public disclosure today serves no valid purpose, impairs the privacy of small donors, and deters political participation.

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