



# CAMPAIGN FINANCE RED TAPE: STRANGLING FREE SPEECH & POLITICAL DEBATE

By Jeffrey Milyo, Ph.D.

Institute for Justice | October 2007

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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.

### 5. Termination Requirements

- By signing the verification, the treasurer, assistant treasurer and/or candidate, officeholder, or proponent certify that all of the following:
- This committee has ceased to receive contributions and make expenditures;
  - This committee does not anticipate receiving contributions or making expenditures in the future;
  - This committee has eliminated or has no intention or ability to discharge all debts;
  - This committee has no surplus funds; and
  - This committee has filed all

## 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.

## How to Complete Schedule A Monetary Contributions Received

Report monetary contributions the committee has received on Schedule A, except for loans (reported on Schedule B). Receipt of repayments for loans made is reported on Schedule H, and miscellaneous receipts are

## Contributor Information

Itemize persons and organizations who have contributed to the committee a cumulative amount of \$100 or more during the calendar year. Provide each contributor's name, street address, city, state, and zip code. Remember to maintain the names and addresses of contributors of \$25 or more in (See Chapter 2)

The image shows a collage of various forms and documents. A prominent form is the 'CALIFORNIA FORM 460' (Schedule A) for reporting monetary contributions. It includes fields for 'Statement covers period' (7/1/XX to 9/30/XX), 'Page 4 of 12', and 'I.D. NUMBER 1254398'. Below this is a table with columns for 'AMOUNT RECEIVED THIS PERIOD' and 'PERIOD (JAN. 1 - DEC. 31)'. The table contains several rows of data, including amounts like \$400,000, \$250, \$1,200, and \$25,000. To the right of the table is a 'CHECK ONE' section with 'SUPPORT' and 'OPPOSE' options. Below the table is a 'Contributor Codes' legend with categories: IND - Individual, COM - Recipient Committee (other than PTY or SCC), OTH - Other (e.g., business entity), PTY - Political Party, and SCC - Small Contributor Committee. Another form visible is 'FPPC Form 410 (January/0...)' with a phone number '866/ASKFPPC (866/275-3772)'. Other forms in the background include 'Type of Committee', 'Controlled Committee', and 'Statement covers period'.

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**“ Apparently,  
it takes a lot of  
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debate for or against a clearly  
defined ballot measure.”**

## Introduction

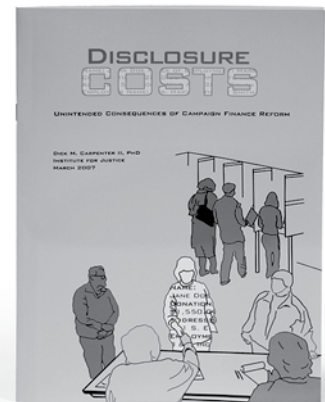
**How hard should it be** to speak your mind on political issues? Before speaking out in public, should you be required by the government to declare your political positions, register as a political committee and then maintain and declare itemized records of every related transaction? Should you be compelled 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](http://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.

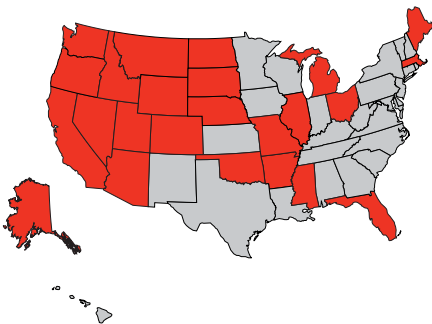
## DISCLOSURE REGULATIONS FOR BALLOT ISSUE COMMITTEES

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.<sup>1</sup>

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



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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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

## 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.<sup>5</sup> 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
<b>PANEL ONE: UNADJUSTED RESPONSES</b>			
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)
<b>PANEL TWO: ADJUSTED RESPONSES FOR COMMON SAMPLE CHARACTERISTICS ACROSS EXPERIMENTS</b>			
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	<p>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.</p> <p>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.</p>	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	<p>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.</p> <p>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).</p> <p>You will need to complete the "Statement of Committee Organization" in the packet labeled "PART TWO: FORMS."</p>	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	<p>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.</p>	
October 17th	<p>4) You receive an official notice from the Secretary of State that Neighbors United is a registered committee (ID #3456).</p>	Record this identification number on all of your disclosure forms.

Continued on page 9

## 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.

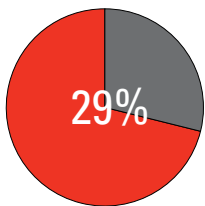
All 255 participants in this experiment would be subject to legal penalties if they were in fact responsible for complying with disclosure regulations. Worse still, in the real world—without the explicit instructions provided in the experiment—most participants would not have even known that they had 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.<sup>6</sup>

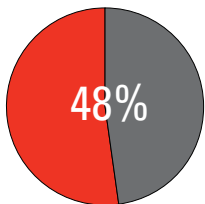
To accurately compare scores across states and groups of subjects, the scores in the top panel of Table 1 had to be adjusted to account for subject characteristics that could affect performance (such as age, voter registration status, education and whether the subject completed the forms). The bottom 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.<sup>7</sup> 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.<sup>8</sup>

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

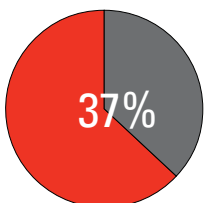
**GRADES**  
Percentage of tasks completed correctly  
with each state's forms



**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
<b>COMMITTEE REGISTRATION</b>			
Ballot issue committee	25%	72%	82%
Legal committee name	36%	n.a.	n.a.
<b>DISCLOSURE REPORT COVER SHEET</b>			
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**

**L E G A L**

**C O U N S E L**

**to complete these**

**F O R M S ... ”**

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
<b>MONETARY CONTRIBUTIONS</b>			
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%)
<b>NON-MONETARY CONTRIBUTIONS</b>			
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%
<b>AGGREGATE CONTRIBUTIONS BY SOURCE</b>			
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.

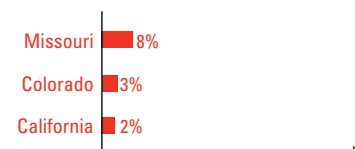
Non-monetary contributions presented even greater problems for subjects, as did aggregating contributions by donor, as shown in the lower panels of Table 3. Subjects were informed of the fair market value of all non-monetary contributions, so they only needed to recognize them as such. For example, Abel 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.<sup>9</sup>

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
<b>EXPENDITURES</b>			
\$1,500 newspaper advertisement	49%	89%	72%
Purpose of expenditures	21%	n.a.	61%
<b>MISCELLANEOUS ERRORS</b>			
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

**“ S u b j e c t s  
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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)	
	NO MISTAKES	PROBABLY SEVERAL MISTAKES
<b>PANEL ONE:</b>		
Q2. Regardless of whether you completed the experiment, do you think you made any mistakes in filling out these forms?	0% (0%)	74% (80%)
<b>PANEL TWO:</b>	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%)
<b>PANEL THREE:</b>	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 allotted (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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup> 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.<sup>14</sup> 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.<sup>15</sup> 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			ITEMIZE COMMITTEE EXPENDITURES
	REGISTER AS COMMITTEE	NAME AND ADDRESS	EMPLOYER OR OCCUPATION	
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. 3<sup>rd</sup> 1088) the 9<sup>th</sup> 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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