

**United States Senate Committee on Finance
Subcommittee on Taxation and IRS Oversight
Hearing on “Laws and Enforcement Governing the Political Activities of Tax Exempt
Entities.”
May 4, 2022**

Questions for the Record for:

Bradley A. Smith, Chairman and Founder of the Institute for Free Speech

Senator Thune

Question 1

What do you find to be the greatest dangers of donor disclosure for 501(c)(3) and 501(c)(4) organizations and their donors? What historical examples of harm do you find most disturbing?

Answer:

To take the second part of the question first, the story of the harms of donor disclosure in the modern era must begin with the NAACP. In the 1950s, Alabama attempted to force the NAACP to provide state authorities with a list of the names and home addresses of all of the group’s members in the state. The NAACP was highly controversial at the time and seen by southern state governments as the enemy. If its individual members were identified to state officials at the height of Jim Crow, the risk of harassment and intimidation – or worse – was self-evident.

The state’s demand for donor information was clearly meant to intimidate supporters of the organization. By exposing large supporters to the NAACP, Alabama could then use the other levers of regulatory power at its disposal to inflict economic harm as reprisal for supporting the NAACP, or count on private action—including possibly illegal actions—to accomplish the same. Had the state succeeded in obtaining a list of NAACP supporters, efforts to secure civil rights in Alabama and all across America would have faced yet another huge hurdle.

But in its 1958 decision in *NAACP v. Alabama*,¹ the Supreme Court saved the nation from that fate. Recognizing the inextricable link between privacy, freedom of association, and free speech, the Court unanimously ruled that the government could not force groups to surrender their member lists. Such “exposure,” as the High Court termed it, would greatly damage organizations’ ability to fulfill their missions. In the words of the Court, Alabama’s demand restricted free association rights because it “may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs...”

The harms that the segregationist South could inflict on an organization like the NAACP represent the most severe danger that can come from disclosure laws. But it is neither the only risk, nor the only time that courts have recognized that disclosure laws cause harm. In the campaign finance context, the court recognized in 1976’s *Buckley v. Valeo* that:

¹*NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958)

“compelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment ... significant encroachments on First Amendment rights or the sort that compelled disclosure imposes cannot be justified by a mere showing of some legitimate governmental interest.”²

The Court has ruled that the harm of disclosure laws outweighed the benefit in other contexts, too. *Brown v. Socialist Workers '74 Campaign Committee*³ upheld the rights of an unpopular minority party to keep the names of its members, donors, and vendees private in order to avoid both “governmental and private hostility.” In *McIntyre v. Ohio Elections Commission*,⁴ the Court struck down an Ohio statute requiring political handbills advocating the passage or defeat of a school tax to list the names of those “responsible therefor.” We should note that in both of these instances, the speech at issue is directly related to campaigns, elections and politics, and therefore has some value for the public to know. And yet, even in these circumstances, the Court saw the harms of disclosure as too high.

Just last year, in *Americans for Prosperity Foundation v. Bonta*,⁵ the Court ruled that 501(c)3 charities have the right to keep their major supporters private from state governments. The Court ruled that California’s attempt to mandate donor reporting was not narrowly tailored to an important government interest for the state. It also found that the threats of reprisal and harassment presented at trial against AFPF were real.

There are, of course, other cases where disclosure rules have been upheld, typically relating to the public reporting of large donations to candidates, political parties, and groups with a major purpose of supporting or opposing candidates in elections. But the Court has deeply scrutinized efforts to expand disclosure laws beyond their current bounds and has long recognized that any disclosure rule brings with it real harms to First Amendment rights.

Critics respond that we are not living in 1950’s Alabama any more, so why worry? Perhaps the best way to see the threat is to look at specific examples of harm caused by a) legally allowable disclosures, or b) illegal disclosures of donations to nonprofit organizations (through either outside hacking or government malfeasance.) Any law that extends disclosure rules would increase the likelihood of events like these.

In 2022, Tammy Giuliani made a \$250 donation to the Canadian trucker’s convoy, the movement that briefly paralyzed Canada’s capital and garnered international attention for its protest against COVID-19 mandates.⁶ Hackers leaked information about her donation and thousands of others, leading to widespread threats and harassment against the donors. The threats forced the café to close.

² *Buckley v. Valeo*, 424 U.S. 1, 48 (1976)

³ *Brown v. Socialist Workers '74 Campaign Comm.* (Ohio), 459 U.S. 87 (1982)

⁴ *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334 (1995)

⁵ *Americans for Prosperity Foundation v. Bonta* 141 S. Ct. 2373 (2021).

⁶ Blair Crawford, “Threats close Stella Luna Gelato Café after owner's name appears in GiveSendGo data leak” *Ottawa Citizen*. February 17, 2022. Available at: <https://ottawacitizen.com/news/local-news/threats-close-stella-luna-gelato-cafe-after-owners-name-appears-in-givesendgo-data-leak>

In 2021, Sgt. William Kelly, a police officer in Virginia, and Craig Shepherd, a paramedic in Utah, made \$25 and \$10 donations, respectively, to the legal defense fund of Kyle Rittenhouse, who was on trial for homicide after fatally shooting two men and wounding another during a night of riots and unrest in Kenosha, Wisconsin. Both Kelly and Shepherd became targets for harassment after hackers exposed donations to Rittenhouse's legal fund and additional details were published in *The Guardian*.⁷ Kelly was fired from his job as a Virginia police officer. An *ABC News* reporter showed up at Shepherd's house with a camera in tow to harass him in the name of "reporting." In both cases, the donors had done nothing illegal and were targeted simply for exercising their First Amendment rights.

In 2021, Cara Dumaplin, a registered neo-natal nurse, created a successful internet business helping parents of newborns with parenting and childrearing advice. A business competitor shared screenshots of Dumaplin's political contributions showing that she had made donations to the re-election campaign of Donald Trump. Dumaplin made 36 donations between \$25 and \$35 to the Trump campaign – not exactly huge money.⁸ The screenshots of the Federal Election Commission report were widely shared across social media platforms. Given the vast unpopularity of Dumaplin's political association among her clientele, the result was obvious. Boycotts of her website, merchandise, and consulting services ensued.

In 2019, Congressman Joaquin Castro tweeted out the names of 44 of his constituents in San Antonio who contributed to Donald Trump's re-election, accusing them of "fueling a campaign of hate."⁹ Donors immediately began receiving threatening phone calls, boycotts of the businesses where they worked, and a pressure campaign to ostracize them for donating to a candidate their congressman disagreed with. A similar story occurred in New York, where Congressman Tom Suozzi threatened to name and shame donors who gave to candidates that had a position different from his own on the SALT tax deduction.¹⁰

Stories like this are too numerous to catalogue. Still others never come to light because the harassment is carried out privately and has its desired effect: the person ceases their support or association with the group and stops speaking out about the issue. Given the ease of finding and spreading donor information on the internet, disclosure-fueled harassment is likely to become more, not less, common over time. If politicians are ready to threaten donors over differences in tax policy, and if people are organizing boycotts and threatening individuals and businesses over \$25 donations to candidates they don't like, then imagine the harms inflicted if every Planned Parenthood donor, every National Rifle Association member, and every Black Lives Matter supporter were forcibly published on a government website. That is the danger of creating new, more expansive disclosure laws.

⁷ Jason Wilson, "US police and public officials donated to Kyle Rittenhouse, data breach reveals" *The Guardian*. April 16, 2021. Available at: <https://www.theguardian.com/us-news/2021/apr/16/us-police-officers-public-officials-crowdfunding-website-data-breach>

⁸ Rebecca Jennings, "What happened when a beloved mom influencer donated to Trump" *Vox*. January 27, 2021. Available at: <https://www.vox.com/the-goods/22252360/taking-cara-babies-trump-instagram-donation-drama>

⁹ Caitlin Oprysko, "Joaquin Castro doubles down amid backlash over tweeting names of Trump donors" *Politico*. August 6, 2019. Available at: <https://www.politico.com/story/2019/08/06/joaquin-castro-trump-donors-1450672>

¹⁰ Tiffany Donnelly, "All I Want for Christmas Is Lawmakers to Respect Privacy" *Institute for Free Speech*. December 16, 2020. Available at: <https://www.ifs.org/blog/christmas-lawmakers-respect-privacy-suozzi-disclosure/>

Question 2

The Biden Administration recently announced that it is setting up a “Disinformation Governance Board” within the Department of Homeland Security.

As an expert on free speech, do you think the federal government establishing a “Disinformation Governance Board” is consistent with the principles of the First Amendment?

Answer:

No. It is a terrible idea that would do tremendous harm to public trust and is wildly inconsistent with both the First Amendment and the spirit of free inquiry that the Amendment is meant to protect. It is fortunate that, after significant backlash, the Department halted the program. I fear, however, that the administration has made its intentions clear, and the Disinformation Governance Board’s work may already be continuing through other means, both inside the Department and in other federal agencies. On June 16th, less than a month after the Board was paused, the White House announced a new internet policy task force led by Vice President Kamala Harris that aims, among other things, to protect “public and political figures, government and civic leaders, activists, and journalists” from “disinformation.”

It seems that while the administration got the message that something called a “Disinformation Governance Board” housed inside DHS was both controversial and unpopular, they have failed to understand the reason why: It is not the job of the government to police the truth.

The Supreme Court has consistently ruled that false speech, even deliberate lying, is generally protected by the Constitution. It has done so not because it thinks that purposeful misinformation is good, but because the enforcement of laws against such speech are far worse. As Justice Kennedy put it:

Permitting the government to decree [deliberate false statements] to be a criminal offense, whether shouted from the rooftops or made in a barely audible whisper, would endorse government authority to compile a list of subjects about which false statements are punishable. That governmental power has no clear limiting principle. Our constitutional tradition stands against the idea that we need Oceania’s Ministry of Truth.¹¹

Of course, there are some narrow exceptions where lying is not constitutionally protected speech - in cases of fraud and perjury, for example. But all such exceptions have clear limits. They all have immediate and definable harms and they are all deeply-rooted in both our constitutional and common law traditions. A general warrant by the federal government to police speech it has deemed “disinformation” is quite the opposite.

This is not a new problem. From the antebellum south fearing the “misinformation” of abolitionist literature to calls to restrict communist speech for fears it contained false kompromat from the Soviet Union, there have always been some who thought the threat of divisive or untrue speech was worth compromising our First Amendment principles. And there have always been

¹¹ *United States v. Alvarez*, 567 U.S. 709 (2012)

others who seek to capitalize on such fears in order to gain the power to punish their critics and political opponents. Yet even when government efforts to police truth start off well-intentioned, they carry a tremendous risk of abuse, bias, and simple error. Tolerating some false speech is the price we pay as a society for maintaining the free and robust exchange of ideas that is essential to our democracy. Luckily, throughout our history, the people's speech rights have eventually prevailed over attempts at restriction.

To those members of the Committee who think that the government does have a role to play in "fighting disinformation," whether through this ill-thought-out program in the Department of Homeland Security or in legislation passed by this body, I would remind them that any such program or law will eventually be controlled or enforced by your fiercest political opponents. It would be extremely shortsighted for any administration or political party to embrace policies in the name of fighting "disinformation" that could one day transform into government censorship of political speech.

And it is worth remembering that much speech that was very recently widely considered disinformation is now widely considered to be true. Look only at the recent pandemic for myriad examples. It was disinformation to say that the new coronavirus was airborne;¹² disinformation to suggest that it was the result of a lab leak in China;¹³ disinformation to promote masks as an effective barrier to transmission;¹⁴ and disinformation to believe that a vaccine would be developed in less than a year.¹⁵ Now, all of these are widely believed. In the years to come, it may be the case that some of these facts are once again upended and will once again be considered false. That's ok, such is the nature of free discourse. Knowledge is evaluated and challenged and reevaluated again.

When you add in explicitly partisan and political "facts," such as the debacle surrounding the Hunter Biden laptop story, it becomes quickly apparent that government enforcement of "disinformation" carries far greater risk of harm than of potential benefit.

Clearly the government, and its officials, have a right to express their own views. But the idea of a government board making pronouncements on the truth or falsity of disputed issues, and pressuring private entities to censor disfavored speech is unconstitutional and rife for abuse.

Question 3

¹² Dyani Lewis, "Why the WHO took two years to say COVID is airborne" *Nature*. April 6, 2022. Available at: <https://www.nature.com/articles/d41586-022-00925-7>

¹³ "WHO 'open' to probing 'new evidence' of COVID-19 lab leak origin theory, accepts 'key pieces of data' still missing" *CBS News*. June 10, 2022. Available at: <https://www.cbsnews.com/news/covid-19-origin-who-china-lab-leak-theory-open-to-new-evidence/>

¹⁴ John Bacon, "'Seriously people - STOP BUYING MASKS!': Surgeon general says they won't protect from coronavirus" *Florida Times-Union*. March 2, 2020. Available at: <https://www.jacksonville.com/story/news/healthcare/2020/03/02/seriously-people---stop-buying-masks-surgeon-general-says-they-wont-protect-from-coronavirus/112244966/>

¹⁵ Jane C. Time, "Fact check: Coronavirus vaccine could come this year, Trump says. Experts say he needs a 'miracle' to be right." *NBC News*. May 15, 2020. Available at: <https://www.nbcnews.com/politics/donald-trump/fact-check-coronavirus-vaccine-could-come-year-trump-says-experts-n1207411>

Is it correct that Lois Lerner was exonerated in the later investigations of the targeting controversy?

Answer:

No, that is incorrect.

Final investigations by the Treasury Inspector General for Tax Administration (TIGTA)¹⁶ and the Senate Finance Committee¹⁷ both concluded that the initial assessments of political targeting by the IRS were, in fact, correct. The IRS under Lois Lerner targeted conservative and Tea Party groups specifically because they were conservative and Tea Party groups.

A counter-narrative has emerged that downplays the IRS scandal by claiming that because a few progressive groups also had their applications for tax-exempt status flagged and delayed, it is wrong to say the IRS was targeting based on the political speech of the groups. This narrative ignores the evidence about both the scale and the severity of the targeting against groups on the right as opposed to groups the left.

First, this counternarrative relies on a 2017 TIGTA audit report¹⁸ that indicated IRS review of applications for tax exemption included other types of suspected political activity besides conservative. But that report covered a time period that began in 2004, six years before the 2010 inception of the “tea party cases” activity by the IRS. The Treasury press release accompanying the 2017 report noted numerous problems associated with attempting to compare the 2017 TIGTA audit report with the seminal 2013 TIGTA audit report. Citing this report to argue that the IRS did not disproportionately target conservative groups starting in 2010 is a bit like arguing that the United States was not a major world power after World War II because its economy was in a depression in the 1930s.

The numbers for the actual period of the scandal are what count—not the numbers for the period before the IRS began targeting conservative groups. And what are those numbers? The IRS found that among those groups targeted by the IRS starting in 2010:

Of the 84 (c)(3) cases, slightly over half appear to be conservative-leaning groups based solely on the name. The remainder do not obviously lean to either side of the political spectrum. Of the 199 (c)(4) cases, approximately $\frac{3}{4}$ appear to be conservative leaning, while fewer than 10 appear to be liberal/progressive leaning groups based solely on the name.¹⁹

¹⁶ “Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review,” Treasury Inspector General for Tax Administration. May 14, 2013. Available at:

<http://www.treasury.gov/tigta/auditreports/2013reports/201310053fr.pdf>

¹⁷ “Bipartisan Investigative Report as Submitted by Chairman Hatch And Ranking Member Wyden” United States Senate Committee on Finance. August 5, 2015. Available at: <https://www.finance.senate.gov/imo/media/doc/CRPT-114srpt119-pt1.pdf>

¹⁸ “Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review” Treasury Inspector General for Tax Administration. September 28, 2017. Available at:

<https://www.treasury.gov/tigta/auditreports/2017reports/201710054fr.pdf>

¹⁹ Id. At Appendix IV

Thus, while it is true that IRS screening to detect political activity (including the infamous BOLO list) did occasionally capture non-conservative groups, the large majority – and clear purpose – of the program was the targeting of conservatives. Hundreds of right-leaning groups were affected compared to fewer than ten left-leaning groups.

That alone should settle the debate, and yet it still does not capture the full extent of the IRS’s mistreatment of conservative groups. The initial targeting, after all, was only the first step. The real damage done was in the lengthy delays in approving groups’ tax-exempt status. Here, too, the IRS found that liberally-coded groups and conservative-coded groups received vastly different treatment. The 2017 TIGTA report found that most groups on the left who were “targeted” still had their tax-exempt status approved within two years, and the majority were approved in the first year. The opposite was true for groups on the right: the overwhelming majority were not approved in two years, according to the 2013 TIGTA report.

As the Sixth Circuit Court of Appeals put it, “the IRS used political criteria to round up applications for tax-exempt status filed by so-called tea-party groups; ... the IRS often took four times as long to process tea-party applications as other applications; ... the IRS served tea-party applicants with crushing demands for what the Inspector General called ‘unnecessary information.’”²⁰

Lois Lerner herself admitted the IRS’s behavior was inappropriate, both in the question she planted to attempt to get ahead of the IRS audit and in her statement to Congress before invoking her Fifth Amendment right against self-incrimination. Lerner, of course, was found guilty of contempt of Congress. While the Department of Justice declined to prosecute Ms. Lerner in 2015, the evidence is overwhelming that the IRS Exempt Organizations Unit purposefully discriminated against conservative groups while she was director.

Senator Warren

Question 1

Your organization – the Institute for Free Speech, formerly known as the Center for Competitive Politics – has criticized proposals that would require companies to disclose their political spending to shareholders and the public.²¹ In your testimony before this subcommittee, you reiterated those views.²²

How is free speech best served by withholding this information from the public? Do you believe shareholders in public companies should be denied information that allows them to make informed investment decisions?

²⁰ *U.S. v. NorCal Tea Party Patriots (In re United States)*, 817 F.3d 953 (6th Cir. 2016)

²¹ The Center for Competitive Politics, “Silencing Business: How Activists Are Trying to Hijack the Public Policy Debate,” June 2014, <https://web.archive.org/web/20140821011018/http://www.proxyfacts.org/wp-content/uploads/2014/06/CCP-White-Paper-6.2.pdf>.

²² Testimony of Bradley Smith before the Senate Finance Committee, Subcommittee on Taxation and IRS Oversight, May 4, 2022, https://www.finance.senate.gov/imo/media/doc/2022-05-04_Smith%20Testimony_US%20Senate.pdf.

Answer:

It's important when considering any question of disclosure to take a holistic view. Every disclosure law violates one group's right to privacy and free association in exchange for an informational benefit to the public. But the calculus for whether the informational benefit outweighs the violation cannot be done in a vacuum, because the more information already publicly available, the less valuable each additional disclosure becomes.

So what disclosure laws do public companies already face for their "political" spending? First, public companies may form a political committee (PAC), which can both donate directly to candidates and other committees and also make expenditures directly advocating for the election or defeat of federal candidates. All contributions (over a *de minimis* amount) to that committee come from employees of the company, not the company itself, and are publicly disclosed. All contributions from that PAC to other committees are publicly disclosed. All expenditures (above a *de minimis* amount) by that committee are publicly disclosed. These include contributions to candidates, political parties, and super PACs – and in all cases, expenditures made by those candidates or super PACs are also publicly disclosed. Expenditure disclosures for all of these entities include independent expenditures (any ad that expressly argues for the election or defeat of a candidate) and electioneering communications (any ad that merely mentions a candidate close to an election.) If a corporation donates directly to a nonprofit and directs the nonprofit to engage in independent expenditures or electioneering communications, that too is publicly disclosed.

Corporations are prohibited from giving directly to candidates at the federal level, but in every state where such contributions are permitted, those contributions are also disclosed. If a corporation engages in lobbying, that too is disclosed through an equally rigorous and extensive set of lobbying regulations.

The additional disclosures that some wish to impose on companies beyond this regime concern things that, until relatively recently, were not considered political at all: things like trade association dues, support for think tanks, research organizations, and other charities. To the extent these activities can influence politics, they do so indirectly, and the connection between the two is often tenuous. Yet the threat of harassment and reprisals against donors whose identities are publicly exposed can deter support for worthy causes. It's worth noting at this point that mandatory disclosure laws reaching beyond traditional forms of political activity have often been ruled unconstitutional by the Supreme Court. A line of cases dating back to the Court's landmark holding in *NAACP v. Alabama*, where Alabama sought to force the NAACP to expose its members, makes clear that Americans have a First Amendment right to support social causes privately.²³ Just last year, in *Americans for Prosperity Foundation v. Bonta*, the Court held that a state's uniform demand for donor lists from charities was a burden on free association.²⁴ The Court was unconvinced that the donor information was necessary for the state to ferret out fraud – a more substantial concern than any small informational benefit to shareholders of proposed new disclosure requirements.

²³ *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462-463 (1958).

²⁴ *Americans for Prosperity Foundation v. Bonta* 141 S. Ct. 2373 (2021).

Setting aside how the Court may view hypothetical new compelled disclosure laws affecting corporate donations to nonprofits, there is already so much disclosure regarding how corporations involve themselves in the political process as to make additional disclosure immaterial from an investment standpoint. Simply put, anyone who wants to invest in a company already has the capacity to learn how that company engages in politics. More importantly, the amounts involved are small enough so as to have little impact—that is, to be “immaterial”—to investment decisions. For an investor who wants to make a profit, new laws would be like adding an additional pixel to a photograph that is already high-resolution – the human eye couldn’t tell the difference. Perhaps this is why investors have regularly voted down proposals for added disclosures of spending related to public affairs and politics, usually by very large margins.²⁵

In fact, new disclosure laws may be harmful to shareholder value, and thus to prospective investors. A 2019 paper in *Business and Politics* found that firms in the United Kingdom did not benefit from the adoption of new corporate shareholder disclosure laws but instead “suffered a decline in value in the months and years that followed.” Noting that their study’s results upended the conventional wisdom, the authors concluded that “greater oversight of corporate political behavior appears to hurt rather than help shareholders by increasing stock volatility, especially for higher-risk firms, and we find some evidence that it also reduces firm value.”²⁶

So what’s really going on here? Given that so much corporate political activity is already disclosed, and additional disclosures are unlikely to help and may even hurt investors, why do some continue to push for more? The answer is twofold: One, claiming there is some secret cabal of public corporations hindering or halting one’s political agenda is an easier excuse than admitting that one’s policies are unpopular or strategies were ineffective. Two, politicians, particularly Senators, can use their bully pulpit to pressure companies with threats of boycotts, protests, or other abuses into backing their preferred agenda or, failing that, to stay out of the policy debate altogether.

Examples of this type of behavior are frankly too numerous to detail in full, but here are just a few examples of the not-so-subtle threats against corporations who exercise their speech rights. Last year, Sen. Cruz suggested that corporations who oppose election reform bills in the states “need to be called out, singled out and cut off.”²⁷ He has also sought information on corporate donations to the Black Lives Matter movement.²⁸

Some of the most prominent attempts to silence disfavored corporate speech have come from Senator Whitehouse, who has attempted to pressure large investment firms into divesting in corporations that donated to what he termed “climate denier groups” – think tanks and charities

²⁵ See Proxy Monitor at <https://www.proxymonitor.org/ScoreCard2022.aspx> (showing 27 of 29 proposals for more disclosure of “lobbying” or “political” activity were defeated by shareholders so far in 2022, with an average pro-disclosure vote of just 31.6%).

²⁶ Saumya Prabhat and David M. Primo, *Risky business: Do disclosure and shareholder approval of corporate political contributions affect firm performance?*, 21 *Bus. & Politics* 205 (2019) (Professor Primo, we note, is an Academic Advisor to the Institute for Free Speech).

²⁷ Sen. Ted Cruz, “Your Woke Money Is No Good Here” *Wall Street Journal*. April 28 2021. Available at: https://www.wsj.com/articles/your-woke-money-is-no-good-here-11619649421?mod=opinion_lead_pos5

²⁸ “Ted Cruz slams 'Black Lives Matter' organization” *The Hill TV*. August 4, 2020. Available at: <https://www.youtube.com/watch?v=FGoEF1CYS9s>

that disagree with the Senator on climate science and/or policy.²⁹ He also, with some regularity, threatens the Chamber of Commerce over policy disagreements. During one recent effort, Sen. Whitehouse called for an investigation into the Chamber because, in his view, their efforts “to defeat passage of the Build Back Better plan”³⁰ were not adequately disclosed.

Senator Warren herself is not immune to the use of her station to punish speakers with whom she disagrees. In addition to joining Sen. Whitehouse’s call for an investigation into the Chamber of Commerce for not supporting Democratic proposals, Sen. Warren has also used donor information from the Brookings Institute to disparage a report from one of their senior fellows, ultimately leading to the scholar’s resignation because there was “discomfort with Warren’s letter” at the liberal thinktank.³¹ And just one day after her preferred policies were criticized in a prominent editorial by a moderate thinktank,³² Sen. Warren responded not to the substance of the critique, but by calling on banks to disclose all contributions to thinktanks.³³ The message to corporations was clear, support an organization that criticizes me or my policies, face the consequences.

In such an environment, it would be irresponsible of corporations to publicly expose contributions to charities, nonprofits, and trade associations. Shareholders and the general public would glean little information from such disclosures, while politicians are anxious to use them to make enemies lists and punish companies that oppose their agendas. These efforts to drive voices out of the arena threaten corporate profitability and the investments of millions of small shareholders, and would reduce the flow of information available to the public on important political issues. Preventing politicians from retaliating against those who don’t support their ideas is one of the fundamental purposes of the First Amendment.

²⁹ Press Release from the Office of Senator Sheldon Whitehouse, “WHITEHOUSE CALLS ON MAJOR INVESTMENT FUNDS TO PAY ATTENTION TO COMPANIES’ FUNDING OF CLIMATE DENIER GROUP” July 11, 2019. Available at: <https://www.whitehouse.senate.gov/news/release/whitehouse-calls-on-major-investment-funds-to-pay-attention-to-companies-funding-of-climate-denier-group>

³⁰ Press Release from the Office of Senator Sheldon Whitehouse, “WHITEHOUSE & WARREN CALL FOR INVESTIGATION INTO U.S. CHAMBER OF COMMERCE FOR LOBBYING DISCLOSURE FAILURES AMID BUILD BACK BETTER LOBBYING BLITZ” November 17, 2021. Available at: <https://www.whitehouse.senate.gov/news/release/whitehouse-and-warren-call-for-investigation-into-us-chamber-of-commerce-for-lobbying-disclosure-failures-amid-build-back-better-lobbying-blitz>

³¹ Philip Hamburger, “How Elizabeth Warren picked a fight with Brookings — and won” *Washington Post*. September 29, 2015. Available at: https://www.washingtonpost.com/politics/how-elizabeth-warren-picked-a-fight-with-brookings--and-won/2015/09/29/bfe45276-66c7-11e5-9ef3-fde182507eac_story.html

³² Jon Cowan and Tim Kessler, “How Elizabeth Warren picked a fight with Brookings — and won” *Wall Street Journal*. December 2, 2013. Available at: <https://www.wsj.com/articles/SB10001424052702304337404579213923151169790>

³³ Jonathan Chait, “Elizabeth Warren and Centrist Democrats Are Already at War” *New York Magazine*. December 5, 2013. Available at: <https://nymag.com/intelligencer/2013/12/warren-and-centrist-democrats-are-already-at-war.html>