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By William Farah

### Lawmakers Should Preserve the Right To Political Privacy on Net

The Internet has dramatically increased public access to campaign finance data and other political information. New electronic filing requirements for candidates and political committees have improved the timeliness and availability of such information, and powerful search engines make researching contributor information a relatively simple task for anyone with a computer and Internet access.

While universal disclosure of donor information serves important public interests, unfettered access to this data also poses a serious threat to citizens' political privacy, as their personal contributions to candidates, political parties and other political causes become available for all to see. Indeed, by using any number of existing Web sites, it is easy to plug in an individual's name and access a list of his or her political donations of more than \$200. Thus, employers, business colleagues, customers, clients and neighbors now have a window into your political beliefs.

Congress should consider making a number of changes to the campaign finance and tax laws to ensure greater protection to contributor information in the era of the Internet. Such changes should include an increase in the amount that triggers public disclosure and restrictions on the sale and use of contributor information involving amounts below the reporting threshold.

In addition, prospective donors are entitled to know when their contributions will subject them to universal disclosure. Political solicitations should inform donors of the threshold for public reporting and Internet access. These changes would not interfere with the benefits the public gains through universal

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disclosure, but would do much to preserve political privacy rights.

The Supreme Court has long recognized a right to political privacy and expressed concern that mandatory disclosure can seriously infringe on First Amendment associational rights. In *Buckley v. Valeo*, the seminal campaign finance case, the Supreme Court upheld provisions of the Federal Election Campaign Act that required recipients of political contributions to disclose the names, addresses, occupations and employers of donors who contributed in aggregate more than \$100 per calendar year (the \$100 threshold was raised to \$200 in 1980).

The intrusion into the right to political privacy was justified, the court reasoned, because disclosure served a number of important public purposes. However, the Supreme Court qualified its ruling by recognizing that even these important public considerations might need to be subordinated to political privacy rights in circumstances where a reasonable possibility exists that compelled disclosure of contributor names could subject donors to threats, harassment or reprisals.

At the time *Buckley* was decided, the Internet was still largely theoretical, and the term public disclosure brought to mind investigative reporters and public-interest zealots culling information from dusty files and microfiche in dingy government offices. The idea that your boss or neighbors might "Google" you wasn't even imaginable yet. The Internet now makes most public information, including political data, ubiquitous and readily available.

As a lawyer who counsels corporations on complying with the campaign finance laws, I know of companies that some years ago instituted internal confidentiality policies to prevent their managers from receiving information about employees who or had not contributed to the company PAC. Such policies were designed to prevent employee coercion as well as other favorable or unfavorable treatment of workers based on their PAC support.

Although contributions of more than \$200 were a matter of public record, it was not within the realm of reason to think that a corporate official would have the knowledge, time and inclination to go to the Federal Election Commission to find out who had and who had not supported the company PAC. Today such confidentiality policies may be well intentioned, but they have little practical meaning in the Internet era. Nothing prevents a manager from accessing his or her company's PAC contributor list from a computer (at the office or from home). One need only check the FEC's Web site ([www.fec.gov](http://www.fec.gov)) to find it. Furthermore, there is nothing to prevent prospective employers from checking to see whether potential hires are "politically correct" or support controversial or unpopular political causes that may clash with their own or company views.

Last year Congress expanded the scope of mandatory disclosure beyond campaign donations to include certain other political contributions. Like contributions to federal candidates and PACs, those to non-campaign political committees organized under Section 527 of the Internal Revenue Code are now subject to public disclosure. The organizations receiving these donations must register with the IRS and file periodic financial reports that list all donors who have contributed a total of \$200 or more during the calendar year. Donor information is available on the Internet.

Extending compelled public disclosure to these non-campaign political organizations was viewed as necessary to capture information about the numerous "stealth" PACs that had sprung up in the past few years and were spending considerable amounts on advertisements designed to skirt the federal campaign finance laws. However, a consequence of this expansion is that donors who make contributions to non-campaign organizations are subject to universal disclosure. Since a political or ideological movement may for tax purposes maintain several organizations to sponsor various activities (some political in nature, others not), a donor may be unaware that his contribution will be subject to public disclosure.

In addition to federal disclosure requirements, a growing number of states make campaign contribution information pertaining to state and local elections available on the Web. As contributor data via the Internet becomes increasingly prevalent, the right to political privacy is further eroded and the possibility that our political beliefs will be used against us in some manner increases. But regardless of whether donors suffer actual harm, the public disclosure in and of itself violates our right to political privacy.

To put things in perspective, imagine you are attending a large dinner to benefit a certain political, ethnic or religious cause that you support - one that may be controversial in some way. Before dessert is served, the master of ceremonies makes a plea for financial support, and doctors, lawyers, engineers and other professionals respond by challenging their colleagues in attendance to match their contributions of, say, \$250. You take the bait and write a personal check for this amount. That act could be a defining moment for you because, depending upon the tax status of the organization to which your contribution is made, it could be a reportable donation and subject to universal disclosure via the Internet. Your co-workers, business associates, clients or customers could easily learn of your support for the cause.

Opponents of the cause might chose to boycott or complain to your employer, since the law requires that the name of your employer be reported along with your name, occupation, address and the amount of your contribution. And when you are considered for a future position, especially a public one, you should expect that your political donor history will be part

of the vetting process.

Congress should take action to preserve Americans' right to political privacy in the Internet era. First, under current federal law, recipients of political contributions are required to publicly disclose the name, address, occupation and employer of each donor who contributes more than \$200. The public disclosure threshold for individuals should be increased from \$200 to \$500. This would adjust for inflation, since the amount was raised from \$100 to \$200 in 1980.

Second, many donors are unaware that their names and other personal information will be accessible on the Web. Materials soliciting contributions should include a statement explaining the disclosure threshold and informing prospective donors that their contributor information may be accessed via the Internet.

Third, while political organizations are required to publicly disclose contributions totaling more than \$200, they are free to disclose lesser amounts. Some do this for administrative convenience; others to demonstrate broad support or to show openness - at the expense of donor privacy.

The law should only permit public disclosure of contributions of \$500 or more; lesser sums are entitled to added protection because their disclosure provides the public with little meaningful information and, therefore, fails to justify the intrusion.

Finally, the sale of contributor lists by political committees is common. Lists of donors who have given less than the amount requiring public disclosure should be given protection similar to that afforded personal financial information. For example, political donors who contribute less than \$500 (assuming the threshold is raised from the current \$200) should be offered the opportunity to opt out and prevent their names from being sold or otherwise made available to other political committees or organizations. In this way, a donor could decide to keep his contribution below the \$500 threshold if he desires total public anonymity.

The public interest served by disclosure and the personal right to political privacy are not mutually exclusive. The right to political privacy is admittedly a qualified right, subject to infringement when important public objectives make some intrusion appropriate. But such intrusions should be carefully designed to minimize their impact on individuals' political privacy.

During the advent of the Internet, we have become aware of the tremendous public benefits this technology offers our society. But we should not let our awe blind us to the need to impose modest restraints when necessary, particularly when that same technology threatens our personal rights.

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