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Campaign Finance Disclosure

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Abstract

Campaign finance disclosure is the last (somewhat) robust regulation we have in American campaign finance, and it is under threat. We urgently need more research on disclosure. Regulatory complexity makes studying campaign finance disclosure daunting. It also creates so-called dark money and anonymous speech online. Scholars must understand the existing regulatory loopholes as they plan studies to avoid biased estimates and understand the conditions in which their results generalize to a broader population. The court's disclosure jurisprudence is thin and based on largely unproven assumptions. As the research on campaign finance disclosure matures, scholars should take a broad view of the costs and benefits of disclosure, rather than the narrow, court-led focus many studies have had until now. We must also take seriously the ways in which cognitive limitations can limit the benefits of disclosure. I explain the doctrine and review existing studies, highlighting opportunities to expand the literature.

INTRODUCTION

The deregulate-and-disclose approach of the Supreme Court's campaign finance jurisprudence has encountered a snag. Deregulation is easy, but regulating disclosure comprehensively is hard. The Federal Election Commission (FEC) has enabled loopholes in disclosure or failed to update disclosure regulations to account for new sources of campaign finance and the rise of social media for political advertising. As a result of regulatory gaps and delayed enforcement, several disclosure challenges have arisen. Millions of social media users have viewed vicious attacks on candidates without knowing their source—and we now know that some of them came from foreign adversaries meddling in our elections. Hundreds of millions of dollars in undisclosed money (dark money) have paid for ads in hundreds of political and judicial races, including down-ballot and state races where anonymously funded attack ads can target candidates ill prepared to respond. All of this veiled political spending (Garrett & Smith 2005) can undermine our theories about the costs and benefits of disclosure in ways scarcely addressed in the literature to date.

Scholars studying campaign finance disclosure must understand the regulatory loopholes that give rise to so-called dark money and disclaimer-free online advertising. These regulatory gaps can undermine the validity of our inferences, bias our observational measures, and limit the generalizability of our experimental studies. When a race is funded in part by undisclosed spending, voters receive only a partial picture of campaign finance from viewing public disclosures. The partial picture can potentially distort voters' predictions about candidate performance in office. And when that spending is both undisclosed and coordinated with campaigns, corruption concerns emerge.

Although the theoretical scope of the costs and benefits of disclosure is broad, the literature is more narrowly focused, following the court's thin jurisprudence in the area. Studies of information benefits to voters and chilling effects on donors exist, but we know much less about how benefits (or costs) to one can be costs (or benefits) to another (Gilbert 2013). Similarly, we know little about disclosure's information benefits to candidates and donors, anticorruption benefits (and costs) to the public, enforcement benefits, and compliance costs. Most research on campaign finance disclosure fails to take into account cognitive limitations of the information recipient. Finally, we should learn from other scholars' work on voluntary disclosure, because candidates have incentives to disclose small donors, even if they are below the contribution threshold. Voluntary disclosure may help candidates.

UNDERSTANDING CAMPAIGN FINANCE DISCLOSURE IS KEY TO UNDERSTANDING AMERICAN CAMPAIGN FINANCE REGULATION

Campaign finance regulations exist on a spectrum of regulatory burden. Some jurisdictions have strong regulations, featuring either public financing or low limits on campaign contributions and spending in private financing regimes, aggressive disclosure requirements, and robust enforcement mechanisms. Others have lower regulatory burdens with few limits and bans and require only limited disclosure. On the spectrum of regulatory heavy-handedness, a disclosure-only regime would be the lightest regulatory touch.

Private financing regimes featuring limits on contributions, spending, or both exist in most of the world. The American system of campaign finance regulation for federal elections is somewhere between a private financing regime and a disclosure-only regime. Direct corporate and union contributions to federally registered political committees are still banned, as is foreign spending in connection with elections. Direct contributions to these committees from individuals are subject to limits, but campaign and outside spending are unlimited. Disclosure requirements are not a complete backstop on our otherwise weak regulatory regime, however. The regulatory framework for disclosure features loopholes and exemptions that leave a good deal of campaign financing both unlimited and undisclosed. Although activists and legislators have tried nearly constantly since *Citizens United v. FEC* (2010) to close loopholes on disclosure-free corporate spending (so-called dark money) and disclaimer- and disclosure-free online advertising, they have not succeeded at the federal level and have experienced only partial success at the state and local level. The recent spate of paid advertising and paid promotion of so-called fake news on social media leading up to and during the 2016 election lends new urgency to the issue (Wood et al. 2018). However, turnover on the Supreme Court matters. Recently, Justice Scalia, who generally approved of campaign finance disclosure, was replaced by Justice Gorsuch, who is more skeptical of disclosure. The result may be less, rather than more, disclosure in the coming years.

Understanding disclosure is crucial to understanding American campaigning. Campaign finance disclosure usually refers to two activities: disclosure and disclaimers. The aims and timing of disclosures and disclaimers differ enough that they should affect voter opinion, and perhaps voter, group, and candidate behavior, differently. Campaign finance disclosure is conducted via reporting obligations, with periodic deadlines that increase in frequency as the election approaches. Committees report contributions and expenditures. The reports are filed and housed with the campaign finance regulators, who release the data to the public. The data are then summarized and presented to the public—usually in a piecemeal fashion—by information intermediaries like the media, political opponents, and campaign finance watchdog groups (Malbin & Koch 2016). For voters, the experience of learning about who funds candidates (or ballot initiatives) is usually separate from the experience of hearing messaging about the candidate or initiative. A voter might read about the candidate's funding before or after viewing an ad, or not at all.

Most groups who receive or spend above a regulatory minimum must register with the campaign finance regulator (such as the FEC for federal races). With the notable exception of so-called dark money groups, registered groups must disclose to the regulator. Dark money groups are social welfare organizations organized under Section 501(c) of the tax code. They can support issues and candidates—as long as there is no coordination between the campaign and the group—by running ads or engaging in other traditional political activity. They are not required to report the sources of their funds to the FEC.[1] Because contributions "in the name of another" are prohibited, creating a limited liability corporation (LLC) or 501(c) organization for the sole purpose of evading disclosure is technically also prohibited. However, enforcement of this provision is rare and so delayed that multimillion-dollar political spenders may approach the resulting fines as a cost of doing business.

Campaign finance disclaimers are the "stand by your ad" requirements that appear with political messages. They identify the entity that paid for the ad. Disclaimers have the feature of appearing immediately with the message, though in the video context, they have the disadvantage of being displayed only very briefly. The information contained in disclaimers may be received—and forgotten—long before the voter is ready to make her decision. Some reformers propose that disclaimers should contain more disclosure-like information, and some states, such as California and Massachusetts, have adopted rules incorporating a list of the top contributors into disclaimers.

[1]They do have to report the source of funding for "electioneering communications," which are ads in support of or against a candidate that air within 30 days of a primary or 60 days of a general election. In the 2016 election cycle, that meant that most 501(c)(4)s that had been running ads fell silent in early September, 60 days before the election. Dark money comprised 42.5% of all outside group advertising spending until the reporting window opened for the 2016 presidential elections (Wesleyan Media Proj. 2016).

DECISIONS BY THE COURT AND FEDERAL ELECTION COMMISSION THAT CAN BIAS OBSERVATIONAL STUDIES AND LIMIT THE GENERALIZABILITY OF EXPERIMENTS

To properly design studies and interpret results, scholars must understand the existing legal framework and the ways that sophisticated players can game it. Political donors can choose among several contribution vehicles, and the decision has implications for disclosure. They can give directly to the campaign or to groups that legally coordinate with the campaign (like political parties and traditional political action committees, or PACs). Such direct contributions are subject to individual contribution limits (e.g., $2,700 to a federal candidate in a general election) and to disclosure requirements. Another vehicle available to donors is to support outside groups that cannot coordinate with campaigns and, depending on the type of outside group, may enable donors to evade the disclosure of their identity. If a group makes only IEs (like a SuperPAC), or if it is organized as a corporation, such as a 501(c)4 "social welfare" organization or LLC, then the dominant understanding is that the group can receive unlimited donations in support of its outside spending (cf. Alschuler et al. 2018). The courts justify unlimited IEs as speech that is protected by the First Amendment and is made independently of campaigns. The court assumes that the outside groups do not coordinate with the campaigns to make IEs. However, the regulations prohibiting coordination are easily circumvented. Coordination is the first regulatory loophole that scholars must understand.

The other two areas scholars must understand are related to donor selection into a level of visibility: dark money and online advertising. When donors choose to give to an outside group, they select their disclosure regime. If they give to a SuperPAC, their donation is disclosed. If they give to a corporation, their donation will not be disclosed outside of narrowly defined circumstances. The groups not subject to mandatory donor disclosure are called dark money groups. The lack of enforcement and lack of regulatory clarity for online ad disclaimers have created another disclosure-related choice for political messaging. Most paid advertising run on Facebook in the final six weeks of the 2016 election was run without disclaimers, and over 75% of paid Facebook ads were run by groups that were not registered with the FEC (and thus did not disclose) (Kim et al. 2018). In the rest of this section, I explain the basic jurisprudential framework, coordination, dark money, and online disclaimers.

The court's disclosure jurisprudence is based on a thin and incomplete theory of disclosure's costs and benefits. The *Buckley v. Valeo* (1976) court assumes that "[c]ompelled disclosure, in itself, can seriously infringe on privacy of association and belief guaranteed by the First Amendment" (p. 64), and it predicted that "contributors of relatively small amounts" are likely to be "especially sensitive" (p. 83). The *Buckley* court is more loquacious when it comes to disclosure's benefits. First is the so-called informational benefit, in which the information revealed in disclosures improves voter competence by "allow[ing] voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches" and "alert[ing] the voter to the interests to which a candidate is most likely to be responsive," all of which the court thinks will help the voter make "predictions of future performance in office" (p. 67). The court also assumes that disclosure "deter[s] actual corruption and avoid[s] the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election" (p. 67). The third benefit of disclosure, according to the *Buckley* majority, is "gathering the data necessary to detect violations of the contribution limitations" preserved by the court (p. 68). The *Buckley* theory remains unchanged today, more than 40 years later (Levinson 2016).

Since *Buckley*, the court has almost always upheld disclosure requirements, although "with reasoning more broad than deep" (Shaw 2016). The key exception is *McIntyre v. Ohio Elections*

Commission (1995), in which the court struck down a disclaimer requirement that would have required the speaker's name and address to appear on a handbill opposing a proposed school tax, saying that the disclaimer regulation was not justified by the government's informational interest. Since *McIntyre*, courts have continued to uphold disclosure, usually on the information rationale (Shaw 2016). Where the risk of harassment is insurmountable by disclosure's benefits, the court will deem a disclosure requirement unconstitutional as applied to those groups, as it did in *NAACP v. Alabama* (1958) and *Brown v. Socialist Workers Comm*. (1982).

The Bipartisan Campaign Reform Act (BCRA) and FEC regulations also prohibit coordination between groups making IEs and campaigns—that is what makes IEs independent. In striking down the ban on corporate IEs in *Citizens United* (2010), the court reiterated an assumption that dates back to *Buckley*, that the "absence of prearrangement and coordination of an expenditure with the candidate or his agent not only undermines the value of the expenditure to the candidate, but also alleviates the danger that expenditures will be given as a *quid pro quo* for improper commitments from the candidate" (*Buckley*, p. 47). In other words, the court is willing to believe the lack of coordination and rule that, as a matter of law, IEs cannot corrupt. Remember that the court sees disclosure as potentially chilling speech, but it has upheld disclosure as furthering anticorruption and informational interests. If, by law, IEs cannot corrupt, then the court will uphold disclosure of the money behind IEs only if disclosure improves voters' information.

Will a candidate be responsive to truly independent spending on his or her behalf, such that disclosure of IEs (not coordinated with the campaign) provides valuable information to voters? As it turns out, the coordination ban that makes IEs independent is gamed so much that truly independent expenditures may not be very common. The ban on coordination is rendered toothless in several ways. First, it does not apply before a candidate declares her candidacy. Before declaring his candidacy for president in the 2016 election, Jeb Bush spent the first half of 2015 traveling with Right to Rise, "his" SuperPAC, raising over $100 million, coordinating strategy and materials (including video that the SuperPAC could use in ads), and playing coy about whether he would run (Blumenthal 2015). By the time he announced his candidacy, his SuperPAC was ready and able to make enormous IEs to support his candidacy—IEs that would not be coordinated with his campaign, as a matter of law. The ban on coordination also does not apply to information obtained from a publicly available source. Outside groups and campaigns take advantage of this safe harbor, communicating in public (via press releases, Twitter and YouTube, and strategic leaks to the press itself) to help their counterparts avoid duplicating efforts or encourage their SuperPACs to take a different strategy (Blumenthal 2015).

Given de facto, if not de jure, coordination between groups making (unlimited) IEs and the campaigns, the policy preferences of the donors to the IE-making groups are relevant to voters' ability to predict a candidate's future performance in office. If we observed all contributions to outside groups, then voters could update their estimations of candidate responsiveness accordingly. In fact, we cannot observe them because of nondisclosed contributions, or dark money, the second regulatory gap that scholars should understand.

Money that supports a candidate and is not disclosed prevents voters from updating their beliefs, at least for some races. Since a 2007 rulemaking at the FEC, 501(c)(4) organizations have had to disclose only contributions received for the purpose of furthering the political message (electioneering communication) that is the subject of the disclosure. Sophisticated actors game this disclosure requirement by accepting general but not earmarked contributions. They argue that without earmarks aimed at a specific political ad, no disclosure is required. As a result, IEs are both unlimited and only sometimes disclosed. Nondisclosing dark money groups can also give to disclosable sources of outside spending, like SuperPACs, reducing the transparency of campaign financing of these groups. An example of this is Karl Rove's SuperPAC, American Crossroads, receiving money from his 501(c)(4), Crossroads GPS. If American Crossroads receives more than $200 each from Sally and Tom, then the voter can know from public disclosures that American Crossroads is funded by Sally and Tom. But if Sally and Tom give to Crossroads GPS, and Crossroads GPS gives to American Crossroads, then the voter sees only Crossroads GPS as the donor to American Crossroads and never sees Sally's or Tom's name. The media sometimes call this phenomenon gray money.

Dark money groups spent $308 million and ran 40% of all outside group ads in the 2012 federal election. In 2016, total spending was $181 million. As of November 2017, the dark money groups gearing up for 2018 have spent more than double what they had spent at this point in the 2016 cycle ($13 million versus $6 million), indicating that 2016 may have been a dip rather than the start of a new trend. Dark money spending is not evenly distributed among races, nor is it evenly distributed ideologically. In addition to the top of the ticket, a third of House and Senate races featured dark money in 2016 (Cent. Responsive Politics 2016). Conservative groups make up the lion's share of dark money spending (76% to liberal groups' 17% in 2016) (Maguire 2016).

Researchers must understand dark money dynamics. Loopholes in our mandatory disclosure framework may create a separating equilibrium in which disclosure-seeking donors give through mandatory disclosure vehicles, and disclosure-avoiding donors give through dark money vehicles. In any race in which dark money is present, so, too, is the opportunity to select into a disclosure condition. Like any study that allows subjects to choose whether they are treated or not, observational studies examining the impact of disclosure on donor behavior will suffer from selection bias. Selection bias undermines our efforts to estimate the causal effects of disclosure. Simply put, the kinds of people who choose to contribute publicly (exceeding the mandatory disclosure threshold and to an entity that discloses donors) are different from noncontributors or those who have chosen to give below a mandatory disclosure threshold. We cannot observe peoples' reasons for their choices. Making inferences based on the differences between groups requires clever research design and appropriate humility about how much we can learn from a project attempting it. Scholars usually opt to use experimental methods to study disclosure. Experiments allow researchers to randomize treatment conditions so that preferences toward anonymity are randomly distributed among treatment groups (in expectation), making comparisons between treatment groups easier to believe. One caution, however: No matter how representative the sample used in the experiment, designs offering only a binary choice to contribute with disclosure or not contribute will have limited generalizability, because sophisticated actors in the population have the option to contribute and avoid disclosure.

The information voters learn from disclosures is only a partial picture of the full set of policy pressures on a candidate. On the safe assumption that coordination happens (notwithstanding *Buckley* and *Citizens United*), we should understand outside expenditures as creating similar policy pressures on candidates as contributions. Indeed, outside expenditures may pressure candidates even more than contributions, because they are unlimited. Unless the distribution of policy interests of nondisclosed donors is the same as the distribution of policy interests represented by disclosed donors—and there are good reasons to believe the groups are different—voters are not getting the full picture of campaign funding. Without observing all campaign funding, voters cannot accurately estimate policy responsiveness once in office. In short, dark money stands to undermine the informational benefit. This matters: Empirical estimates of contributor and candidate ideology are built from disclosed contributions (Bonica 2013, 2018). The estimates cannot incorporate contributions to dark money groups that are not (voluntarily) disclosed. At least in theory, ideology estimates could be biased in races with dark money expenditures. That said, given the construction of the estimates and the sheer number of disclosed contributions, the bias until now, if it exists, may be small. Bonica (2018) suggests that groups who participate in outside spending generally influence candidate behavior in ways that the disclosed contributors do not. The size of the potential bias in the informational benefit from dark money has not been measured, though Bonica's paper is a productive step in that direction.

Dark money can also undermine our behavioral assumptions about how disclosure reduces corruption. In theory, the corruption-deterring effect of disclosure stems from an ex ante refusal of candidates to make promises in exchange for campaign support. That ex ante refusal is born of the candidate's belief that journalists and opposition researchers can detect corrupt acts, because they can follow the money—the money trail is visible. But where the money trail goes dark, the probability of corruption detection decreases. Under the basic model of political corruption, dark money means that the expected net benefit from corrupt acts will increase, and we should observe more corrupt acts as a result (Becker 1968, Rose-Ackerman 1978). Donors with corrupt intent can use dark money vehicles to spend on behalf of campaigns, coordinating as described above, and exchange campaign support for policy promises. In races featuring dark money, both the appearance of corruption and the probability of a quid pro quo are therefore increased.

Dark money complicates our ability to measure donor chilling as well. Campaign finance is "hydraulic" (Issacharoff & Karlan 1998), and the speech of donors routing political spending through dark money groups is not chilled. If we see donors disappear from a disclosed donor pool, we cannot infer that their political speech has been chilled.

Aside from dark money, online advertising disclaimers present another regulatory loophole that allows the source of political messaging to be obscured from voters. Advertising disclaimers are not required on ads that run online if they are not "placed for a fee on the website of another" (11 C.F.R. 100.26). Even if they are, most social media ads have not contained disclaimers, because those placing the ads believed, correctly, that the FEC would not enforce the requirement, or they claimed they fit the small-items exemption. We lack a record of ads that have run online for federal and most state races, rendering enforcement of disclaimer violations very difficult. As a result, political ads have run disclaimer free on social media when they would require a disclaimer if they ran on television, cable, or radio (Wood et al. 2018). Even groups that disclose their donors may take advantage of the ability to not push their identity to the voters via disclaimers when advertising online—another example of selecting into a transparency (here, disclaimer) condition.

In both the disclaimer and disclosure contexts, where donor information is not required, it can still be volunteered. Many online advertisements contain disclaimers. All disclosure thresholds (including the dark money threshold of infinity) provide an opportunity for groups and candidates to voluntarily disclose below the threshold. Wood & Spencer (2016) observed that 17% of disclosed contributions to state congressional candidates were below the state's mandatory thresholds, implying that voluntary disclosure occurs regularly. MoveOn.org and Our Revolution, both 501(c)(4) organizations, voluntarily disclose contributions above $5,000 despite their legal ability to avoid disclosure for nonearmarked donations. Campaign finance scholars are just beginning to study voluntary disclosure. Where accompanied by audits, voluntary disclosures can signal a group's commitment to transparency, which can benefit the candidate the group supports. Voluntary disclosures (with audits) can also provide voters with a more complete set of information about the policy pressures a candidate faces or the money behind ballot initiative campaigns. In sum, any scholarship attempting to measure the impact of disclosure or disclaimers on voter information and corruption must grapple with (*a*) donor self-selection into disclosure or disclaimer conditions and (*b*) easily circumvented coordination rules.

MAPPING THE THEORETICAL TERRAIN

Disclosures exist in many areas of law, and campaign finance research stands to learn from the literature developed around consumer protection disclosures and disclosures of conflicts of interest in advisor and medical relationships. Although the consumer context and advisor/medical context are not directly analogous to the campaign finance disclosure context, the breadth of their research helps us understand the narrowness of our own body of literature so far. Existing research in campaign finance has examined the costs to donors and some of the benefits to the public, but scholars have focused much less on the full set of benefits to the public, costs and benefits to candidates, benefits to donors, costs to the public, and aspects of human cognition that might moderate the impact of disclosures voters encounter.

Scope of Research in Other Disclosure Contexts

Hadfield and coauthors (1998) explain that theories about information and disclosure in economics have matured considerably, from a simplified model of information asymmetry between producer and consumer (or principal and agent) to a more modern and nuanced recognition of complexity inherent in solving informational problems via disclosures. For the consumers, becoming informed can be costly. Consumers, as disclosure recipients, carry a cognitive load that interferes with their ability to make the right decision for themselves and may limit the effectiveness of disclosures—or at least make simpler designs preferable (Fung et al. 2007, Loewenstein et al. 2014). Sellers/disclosers may respond strategically, from lobbying against disclosure and liability to hiding information and burying it in "difficult-to-decipher (or even receive) statements" (Hadfield et al. 1998, p. 143). Strategic responses to disclosure laws minimize the benefits to consumers and limit the amount the information asymmetry is rectified (Hadfield et al. 1998). Another line of research establishes that disclosure can have a downside, because agents can overreact to public disclosures (Morris & Shin 2002), though because the overreaction conditions are narrow, transparency can improve social welfare under many conditions (Svensson 2006).

The presentation of information matters. More information is not always better, and we should help consumers by structuring their choices in a way that nudges parties toward better decision making (Thaler & Sunstein 2008). One part of successful choice architecture is presenting the information simply, a school of thought known as targeted transparency (Fung et al. 2007). Other scholars provide in-depth reviews of the results from targeted transparency studies (see, e.g., Dranove & Jin 2010). They include restaurant grades (Ho 2012, 2016; Jin & Leslie 2003), hospital patient safety disclosures (see, e.g., Chassin 2002, Chassin et al. 2010, Marshall et al. 2000, Schneider & Epstein 1998), and nutrition labels (Derby & Levy 2001, Kristal et al. 1998, Nayga et al. 1998). Campaign finance researchers have only recently begun to evaluate aspects of targeted transparency in the context of disclaimers (see, e.g., Dowling & Wichowsky 2013, 2015; Ridout et al. 2015).

Conflict-of-interest disclosures have also received in-depth scholarly attention. Cain et al. (2005) found that disclosures benefit the conflicted advisor more than the recipient and that disclosure is most likely to help recipients with high baseline knowledge. Sah & Loewenstein (2014) found that where conflicts are avoidable, the conflict-avoiding effect under mandatory disclosure is larger than under voluntary disclosure of the conflict. Advisors who chose to take on a conflict voluntarily disclosed it more often than not. They were motivated by their assumption that advisees would make an adverse inference from the lack of disclosure and their desire to behave ethically.

The trade-off between mandatory and voluntary disclosure has been well theorized in other fields. Shavell (1994) theorizes that if information generates social value, its mandatory disclosure is preferred to voluntary disclosure as long as the social benefit exceeds the cost. For consumer disclosures, whether mandatory or voluntary disclosure is preferable depends in part on the consumers' prior beliefs about the quality of the product in the absence of a disclosure (Milgrom 1981, Roe et al. 2014); however, consumers may not actually make negative inferences from nondisclosure (Dranove & Jin 2010). Firms can also game their mandatory disclosures by distracting consumers with voluntary disclosures at the same time (Roe et al. 2014). In the conflict-of-interest context, voluntary disclosure is most beneficial with sophisticated information recipients (Sah & Loewenstein 2014).

Unique issues are presented in campaign finance that diverge from the issues addressed in consumer and advisor settings. Rather than appearing when the information recipient is deciding whether to purchase a product or accept advice, campaign finance disclosures dribble in for months, often when the voter is not particularly engaged in the voting decision. Moreover, a good deal of campaign messaging reaches voters with no disclosure at all. Scholars of campaign finance disclosure should use the scope of scholarly work in other contexts to inform our own work. For example, cognitive biases and information processing, the assumptions made by voters in the absence of disclosure, and the effects of voluntary disclosure are all important to understand in the campaign finance context and are almost completely neglected in our current research. We have an incomplete picture of the costs and benefits of campaign finance disclosures, and many of our theories fail to contemplate offsetting effects (cf. Gilbert & Aiken 2015; Gilbert 2013) and moderating effects that scholars studying disclosure in other contexts have learned about for decades.

RIGHT-SIZING THE SCOPE OF CAMPAIGN FINANCE DISCLOSURE RESEARCH

Until recently, most scholars studying campaign finance disclosure have followed the court's narrow approach. Our inquiry should be broader. Here, I summarize the costs and benefits we have explored and borrow from other fields to propose opportunities to broaden the scope of campaign finance disclosure research as the literature matures.

Research and Opportunities for Studying the Benefits of Disclosure

The antecedent question to whether voters learn from disclosures is whether disclosures actually contain information that we can use to predict how a candidate will vote once in office. Using machine-learning techniques on donations to over 72,000 state- and federal-level candidates over a 24-year period, Bonica (2018) establishes that we can. Indeed, disclosed contributions are excellent predictors of future roll call votes. Regardless of whether voters are paying attention to the information gleaned from disclosures, social science has now established that the disclosed contributions both can and do predict future votes.

Disclosure policies, from mortgage disclosures to environmental disclosures to campaign finance disclosures, aim to enhance decision making (Ben-Shahar & Schneider 2014, Fung et al. 2007). If voters informed themselves thoroughly about issues related to the election, campaign finance disclosures would be less important than they are (Ackerman & Ayres 2002). Rather than informing themselves completely, voters learn just enough to cast a knowledgeable vote. They are "rationally ignorant" (Downs 1957). Voters use heuristics, or informational shortcuts, to help them make the vote choice most aligned with their priorities without requiring encyclopedic knowledge of a candidate's positions on every issue (Lupia 1994). The most obvious heuristic is a candidate's party label, but in the ballot initiative context, party label is not available. In an important study, Lupia (1994) found that if voters knew which of five competing ballot initiatives were supported by the insurance industry, they were more likely to make vote choices that aligned with their preferences. The broad takeaway from several scholars is that campaign finance information can be used as a heuristic (Garrett 2003, Gerber & Lupia 1999, Popkin 1994). Disclosure should also help voters identify the groups that endorse a candidate by spending on her behalf (Ortiz 2012).

Some scholars have theorized that campaign finance information is a particularly strong heuristic, because it reveals the intensity of support by revealing the amount contributed (Garrett 2002, Youn 2013).

Campaign finance information will be used only by voters for whom it is valuable. Information is valuable only where it improves knowledge (Lupia & McCubbins 1998). This insight leads to an obvious conclusion that has so far remained implicit in the literature on campaign finance: Because only some voters will need additional information to increase their knowledge, the effect sizes we observe from offering campaign finance disclosure information to voters will necessarily be limited. This is especially true because, among the subset of voters who seek out information during campaigns, many will be sophisticated voters whose opinions are already fairly well fixed (Lau & Redlawsk 2006, Zaller 1992). The conclusion does not minimize the policy importance of campaign finance disclosure, but it should temper our expectations of its observable effects.

Few studies test the effects of campaign finance disclosure alone (La Raja 2007). Most include disclaimers. One disclosure-only study found no information benefit. The study provided a particularly rich information environment to subjects, who might not have needed the additional information provided by disclosure to make an informed decision (Primo 2013). Other studies have pushed disclosure information to subjects more forcefully and also included disclaimers. Dowling & Wichowsky (2013) showed subjects an ad attacking a state senate candidate. An outside group ran the ad, and the ad included the FEC-required disclaimer. The researchers followed the ad with disclosure information presented in one of three formats. One treatment listed the top five contributors (akin to Levitt's 2010 Democracy Facts proposal, in which contributors are listed like calorie counts on packaged food), one provided a news story about outside groups becoming involved in state politics, and another emphasized that the outside group was allowed by law to not disclose its contributors. Disclosure—particularly the news story about anonymity and the list of the top five contributors—mitigated the effects of the attack ad. Subjects who learned about the funding behind the ad were more favorable to the attacked candidate than those who viewed only the ad. An implication is that anonymity, when exposed as such, can reduce the persuasiveness of a message. It reduced respondents' confidence in the credibility or trustworthiness of the sender of the message (Dowling & Wichowsky 2013).

Disclaimers have consistently been shown to affect voter perceptions. Dowling & Wichowsky (2015) showed subjects an attack ad and manipulated whether they saw no disclaimer or a disclaimer saying the ad was run by the attacked candidate's opponent (the ad beneficiary), a party, or an outside group. Without any disclaimer, subjects' perceptions of the ad beneficiary were favorable, on net; the attack ad hurt the attacked candidate. By contrast, subjects who saw the party and outside group disclaimers felt much less positive about the ad beneficiary. In other words, disclaimers of the ad sponsor mitigated the effects of attack ads. The effects were observed only among copartisans of the attacked candidate and were strongest for disclaimers revealing outside groups ran the ad (Dowling & Wichowsky 2015).

Can disclosures benefit disclosers by allowing them to signal that they are supported by a broad base of small donors? Results are mixed. Prat et al. (2010) find that small contributions signal candidate effectiveness to voters. Ridout et al. (2015) showed subjects an attack ad with six treatment variations. The authors found that disclaimers by outside groups, including those mentioning the sponsor was funded by small donors, were perceived as most credible and trustworthy. A news story discussing large and anonymous donors was particularly detrimental to credibility and trustworthiness, though the research cannot distinguish between the effects of donor size and their anonymity. Any amount of disclosure via news stories, or disclaimers that went above and beyond the current regulatory requirements, helped mitigate the effects of the attack ads in terms of voter choice. An informational benefit from disclosure is evident here, but it might be related to teaching voters which groups are not trustworthy or credible (a negative effect), rather than teaching voters about attractive features of group funding (a positive effect).

The scope of the informational benefit is probably greater than the court envisions. In addition to learning about candidate policy responsiveness, disclosures probably also provide valence information. Voters evaluate candidates on their valence, the characteristics on which voters tend to agree regardless of ideological preferences, such as a preference for more competent candidates (Bianco 1994; Stokes 1963, 1992). Information about the quality of candidate and group reporting in response to disclosure obligations could result in valence benefits (or costs) for candidates. Audits and media coverage of disclosures can also inform voters about a candidate's performance on a fairly complicated regulatory task—complying with both campaign finance laws and disclosure laws (Wood & Grose 2018). Indeed, performing the task itself may discipline candidates or serve as a selection mechanism to filter out less capable candidates, both of which benefit the public by improving the quality of the candidate pool.

Valence issues are probably most important to voters in primaries, when the policy distance between the candidates is smaller and party cannot be used as a heuristic. In that context, I test experimentally whether campaign finance transparency (or lack thereof) can cause voters to prefer a candidate who is transparent about her campaign financing to a candidate who receives support from groups who do not disclose their funders. Mere compliance and voluntary disclosure over and above what the law requires, including where the law requires no disclosure at all, can reveal a commitment to transparency that is attractive to voters: Respondents who viewed the analysis of a "nonpartisan transparency advocacy group" about the candidates' and their supporters' campaign finance transparency were 9.5 percentage points less likely to vote for a candidate supported by nondisclosing groups and were 5 percentage points more likely to vote for the more transparent candidate, for a net effect of almost 15 percentage points, suggesting that voters prefer transparent candidates to less-transparent candidates (Wood 2018). Wilcox (2005) predicts that compliance and rewards to compliance would be strongest where competition is highest, a prediction so far not tested.

Other benefits bear mention. Disclosure enables contributors to credibly signal their alignment with a candidate or platform, and evidence of the contribution can later be used to gain access to the elected official. Disclosure rules help contributors prove they contributed. We know that contributors have better access than noncontributors, at least in some jurisdictions (Kalla & Broockman 2014, Powell 2012). Gilbert (2013, p. 1849) hypothesizes that disclosure can attract political speech, because it "provid[es] potential speakers with information about the positions and credibility of candidates,. . .prompt[ing] actors to speak when they otherwise would not." When this happens, listeners receive more, or at least different, information than they otherwise would if disclosure only chilled speech, highlighting an information trade-off (Dawood 2014, Gilbert 2013). Along those lines, disclosure allows like-minded people to find each other and support groups of interest. We lack empirical tests of disclosure thawing speech.

Kalla & Broockman's (2014) work on access is corruption adjacent, and Persily & Lammie (2004) studied the "appearance of corruption," but corruption itself has not been rigorously studied in the disclosure context. Scholars in the broader campaign finance area have attempted to circumvent the measurement problem by studying loosely related areas, like "trust in government" and "political efficacy" (Primo & Milyo 2006) and "faith in democracy" (Brown & Martin 2015), but they have not focused on disclosure's effects on these variables.

Disclosure's benefits to enforcement of campaign finance violations have received little scholarly attention. Institutional frameworks for enforcement vary a lot and are hard to compare. Lochner & Cain (2000) describe formal and informal enforcement mechanisms at the FEC and California's Fair Political Practices Commission. They find that formal enforcement relies heavily upon third-party complaints, although those tend to be the least serious violations, and that the media does pick up on the salient violations and largest fines.

Two complicating factors are crucial for scholars to understand. First, Heerwig & Shaw (2013–2014) argue that disclosure's benefits might be limited by compliance problems. The FEC's disclosure regime does not function as well as the court assumes. Another important factor affects our estimates of costs and benefits: cognitive limitations of voters. Voters are awash in information, as Primo (2013) rightly points out. How much can they absorb from disclaimers and disclosure? Do people pay attention to disclosures? What is the half-life of the information they learn from disclosures and disclaimers? The research we have that urges streamlined disclosures to ease voter learning, namely, Levitt's Democracy Facts, has not been tested for effectiveness. If voters are not paying attention and not learning from disclosures, why do candidates comply with disclosure rules? A rational candidate might not bother with compliance in low-salience elections, or when running unopposed (where there is no concern about opposition researchers), or in jurisdictions with slow enforcement, where fines can be paid long after the election as a cost of doing business. Candidates might overestimate the amount of voter attention or the probability that the media will expose their malfeasance, an extension of the spotlight effect (Gilovich et al. 2000) with a literary name: the telltale heart effect (Loewenstein et al. 2014).

Research and Opportunities for Studying the Costs of Disclosure

The hypothesized costs of disclosure are (*a*) the potential chilling of donor speech born from the risk of harassment inherent in having contributions made public and (*b*) the administrative burden faced by candidates and groups to comply with reporting requirements. It is, undoubtedly, easier for the public to view contribution information in the age of the Internet than it was when the FEC stored reported data on paper in a basement in Washington, DC. Today, our political contributions are searchable online. Technology is changing the nature of disclosure (Briffault 2010). In theory, the risk of chilling speech is particularly strong for special subsets of donors, such as small donors and donors to politically fringe or vulnerable groups.

The concept of chilling is not well microfounded in the literature. Intuitively, it seems more problematic for people to drop out entirely (opt out of speaking), rather than to merely give anonymously or below a mandatory disclosure threshold (speak less). Given the existence of dark money options, these are observationally equivalent: When a donor drops out of the donor pool, we cannot observe whether they stopped giving entirely or whether they stopped giving disclosable amounts (or via disclosable avenues).

Empirical results on chilling speech are mixed. La Raja (2014) finds in an experiment that reminding contributors that contributions are searchable online can reduce their willingness to contribute, particularly among small donors. The magnitude of the effect varied from a 51% decrease in willingness to contribute to results that were indistinguishable from zero. Donors also gave smaller amounts than they otherwise would have when the hypothetical disclosure threshold was $50 (but not $1 or $100). Both effects were strongest among those who self-reported as being cross pressured by their social context, describing their political views as different from the people around them. Wood & Spencer (2016) examine the same phenomenon in a quasi-experimental setup, using observational data from state-level contributions with particular attention to donors whose estimated ideology differs from people in their zip codes. We leverage changes in the strength of state disclosure laws to evaluate whether an increase in the visibility of contributions causes a decrease in donors' willingness to contribute again in subsequent elections. We find an average decrease in repeat contributions of around 2–3 percentage points, with 95% confidence intervals suggesting that the maximum decrease is 4–6 percentage points. Contrary to the *Buckley* court's assumptions, small contributors and local ideological outliers are no more likely to drop out than other contributors in the states that strengthened their disclosure regimes. The results are robust to a range of treatment assumptions, but actual manipulation of donors in the treated states is difficult to establish. Importantly, because voters who opt out may be choosing to donate via dark money avenues, the chilling effect of disclosure may be even smaller than we estimate, because speech made anonymously is not chilled. Other interesting heterogeneity may exist in the chilling effect. For example, the contributor's goals, such as Francia et al.'s (2003) intimates, ideologues, and investors, may predict the probability that one opts out. Personality traits may matter as well.

Harassment seems to be something for which the bark is worse than the bite, though to the extent that there is a bite, it should be observed in ballot initiative campaigns, where disclosure exposes donors' views on narrow, and often contentious, issues (Kang 2013). Systematic research is thin, perhaps in part because scholars concerned with harassment are more interested in deregulation than more reform-minded scholars (Hasen 2012). Carpenter (2009) surveyed voters leading up to the 2006 elections in six states. The respondents supported disclosure generally but were much less supportive of the idea that their own contribution information should be publicized, expressing a preference for anonymity and distaste for risk and exposure. In a related disclosure context, a group of political scientists, as amici curiae in *Doe v. Reed* (2010), argued that over a million citizens signed their names to petitions in 28 statewide referenda in the 2000s, and not one petition signer alleged any instance of harassment or intimidation (see Hasen 2012).

Complying with reporting requirements can be difficult. Research on administrative burdens is thin. In a project on FEC audits, Wood & Grose (2018) observe that when audited, federal congressional campaigns revealed only a 50% incidence of any violations, and among those, enforcers exercised discretion and issued fines against only 10% of violators. The only other compliance-related projects are not peer reviewed. They suggest that the campaign finance regulations are difficult compliance tasks for nonspecialist noncandidates (Milyo 2009, Munger 2009). Of course, government campaign finance regulators perform outreach and have helplines to assist with compliance. At the federal level, each committee is assigned a compliance analyst, who encourages committees to reach out for reporting questions. Finally, government regulators understand that perfect filings are unlikely to happen without assistance, and they often exercise discretion with minor violations. Compliance concerns may be overblown, but more research is needed in this area.

Other potential costs may exist. Disclosure may focus voters' attention in the wrong place, away from first-order information about policy and candidates (Karlan 2012). Disclosure also might disillusion voters who observe large contributions to outside groups or large expenditures. Once voters see how expensive elections are, they may be disheartened, an idea supported by the work of several scholars (see, e.g., Ansolabehere et al. 2005, Brown & Martin 2015, Verba et al. 1995, Wilcox 2005). Brown & Martin (2015) find that as the size of a contribution increases, voters' faith in a candidate's willingness to vote in line with her constituents decreases. Sances (2013) tests the voter competence/voter confidence trade-off. Disclosure produces gains to voter competence. Voter confidence is conditional on whether the money is anonymous, and it decreases in the amount contributed. But "[w]hen voters are informed of the type of interest group providing the funds, the corrosive effects of money on trust appear to evaporate" (p. 64). Sances observed competence gains in both a disclaimer and pure disclosure (newspaper article) context, and his voter confidence findings were limited to the pure disclosure context.

Some scholars have argued that disclosure can actually facilitate corrupt exchanges. Gilbert & Aiken (2015) argue that disclosure has crosscutting effects, reducing corruption under some conditions but increasing corruption when it allows conspirators to more easily identify and rely on each other. In their call for unverifiable, secret donations, Ackerman & Ayres (2002) argue that even under full disclosure, politicians have the same incentives to accept large amounts of money, and that it is difficult to prove corruption that can result from large donations in court. Ackerman & Ayres conclude that breaking the information link between contributor and candidate is the best solution, and contributions should be secret. Briffault (2010) suggests raising the disclosure threshold and publicly revealing personally identifying information only for the largest donors, revealing only aggregate data for smaller donors. Elmendorf & Wood (2018) suggest an additional benefit of contributor anonymity, aimed particularly at the small-donor context of public campaign finance vouchers. Breaking the link between contributor and contribution for small donors would have salutary effects on elite political knowledge of constituent policy preferences, as well as help ameliorate other ills driven by the data-rich environment in which candidates currently campaign. Gardner (2011) points out that the effect of anonymity is context dependent, and it can help us behave more in line with our "better selves" or free us to be "irresponsible and antisocial."

Avenues for future research on the costs of disclosure abound. What kinds of cross pressure might cause a potential donor to seek anonymity? Are conservatives or liberals more likely to seek anonymity, and do they seek it for the same reasons? Is speech by nondisclosing groups more extreme, more negative, or more divisive than speech accompanied by disclosure, such that we can understand the nature of speech that is chilled by disclosure? Is it constitutionally problematic if disclosure chills some speech but attracts other speech?

CONCLUSION

Campaign finance disclosure is important and understudied. Scholars of campaign finance disclosure must understand how gaps in the regulations for mandatory disclosure and online political advertising can bias our observational work and reduce the generalizability of our empirical findings. The theoretical scope of the benefits and costs of disclosure is much broader than our current research implies. Scholars in other areas have spent decades on issues that can moderate the effectiveness of disclosure, such as cognitive limitations of disclosure recipients who are already overloaded with information. Many of the costs and benefits of campaign finance disclosure probably have offsetting effects, such as chilling versus thawing speech. The current deregulate-and-disclose jurisprudence puts a lot of pressure on disclosure as a mechanism for regulating campaign finance, and we should learn as much about it as we can, as carefully as we can.

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