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Campaign Finance Disclosure Has Costs

By Dick M. Carpenter II, David M. Primo, Pavel Tendetnik and Sandy Ho

Roll Call

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Record amounts of money poured into campaign coffers in the 2012 election season. Unbeknownst to many donors, contributions of more than \$200 to a federal candidate produced more than just another campaign ad. They also resulted in the disclosure of the donor's name, address, contribution amount, occupation and employer's name on the Internet for anyone to see.

For campaign finance overhaul advocates, policies that require such disclosure are brimming with benefits at virtually no cost. But in recent years, critics have begun to question just how costless disclosure actually is, arguing that it chills speech and association once potential donors fully understand the disclosure process.

A lively debate has ensued, almost entirely devoid of real-world evidence, so we saw the current election season as an ideal laboratory for studying how disclosure requirements affect the behavior of potential donors to congressional campaigns. We invited candidates in every race to post the following disclaimer on the contributions page of their campaign website for a period of two weeks in September:

“By making a donation, I understand that my name, the amount of my donation of \$200 or more, address, occupation and employer will be made publicly available, including in online searchable databases.”

We planned to examine the contribution patterns before, during and after the two-week period to discern the effect of this disclaimer. But we never had a chance to do so.

Of the almost 1,400 invitations sent, a mere 25 agreed to post the disclaimer; 65 others responded with a clear “no.” The rest never responded, the equivalent of a “no.” Upon receiving a “no” response, we asked for a reason. The results were revealing. One campaign wrote: “Some people might have reservations before giving if the message is there. Although, by law, their information is available to the public, most people do not think about that fact when giving. We don't want to do anything that will make them think twice before giving.”

The finance director of another campaign expressed concern that the disclaimer would

deter even donors who might give less than \$200: “I don’t want to hurt donations to our campaign. If someone reads this on our website, they may not give. Even if some of our donors only give \$25, they would not cross the \$200 threshold requiring reporting, but they would be scared off by the other language.”

Then there was the voice mail left for us by a candidate himself: “It sounds like you are asking me to cut my own throat here and tell my contributors to give no more than \$200. I’m having enough trouble just getting \$5 out of them.”

Even a candidate who agreed to post the disclaimer confided to us over the phone: “I hope this does not hurt my donations. I wouldn’t want this to spook any of our donors so that they would not contribute.”

Such responses were common. Just as revealing were the differences between those who agreed to post the disclaimer and those who did not. Those who agreed to participate were more likely to be third-party candidates with no serious chance of winning who raised little money. Conversely, those who declined to post the disclaimer were more likely to be well-funded incumbents associated with one of the two major parties. In other words, the candidates for whom money mattered most feared the possible chilling effects of giving donors a more complete picture of what happens to the campaign finance information reported to the government.

In his partial dissent in the landmark Citizens United decision, Justice Clarence Thomas wrote of such costs: “Now more than ever, [disclosure] will chill protected speech because . . . ‘the advent of the Internet’ enables ‘prompt disclosure of expenditures,’ which ‘provide[s]’ political opponents ‘with the information needed’ to intimidate and retaliate against their foes.”

Apparently candidates liberal and conservative see the same costs — where simply telling donors what actually happens to their personal information after making a donation is tantamount to candidates cutting their own throats.