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# Show Me the Donors

What's the point of disclosing campaign donations? Let's review.

By [Richard L. Hasen](#) | Posted Thursday, Oct. 14, 2010, at 4:06 PM ET



What's the point of disclosing campaign donations? With all the [controversy](#) still swirling around whether the U.S. Chamber of Commerce is using foreign money to [fund](#) its \$75 million effort to support Republican Congressional candidates, the [secrecy of Karl Rove's new political groups](#), and the emergence of new groups with anodyne-sounding names like the "[Coalition to Protect Seniors](#)," it's worth stepping back and asking why federal law requires campaign [finance](#) disclosure in the first place. Do we still need these laws? Do they work

the way they're supposed to?

For years, federal campaigns took place without effective disclosure laws. [After Watergate](#), with its [revelations](#) of secret illegal corporate cash being funneled to candidates and with paper bags full of campaign [money](#), Congress finally passed a law in 1974 requiring disclosure of contributions to candidates and political committees and the spending these groups engaged in. At this point, most political players were candidates, political parties or political action committees, and they all were subject to the disclosure rules.

For a long time following, there was a [virtual consensus](#) in Congress that disclosure was the way to keep campaigns clean. But, in recent years, as the Supreme Court has [struck down](#) more limits on election spending, the consensus has unraveled. Emboldened, opponents of campaign finance regulation have gone after disclosure, too.

Their arguments are not new. As soon as Congress passed its 1974 disclosure laws, a coalition of plaintiffs, including the ACLU, challenged the requirements as overly broad. They argued that at least some disclosure is unconstitutional under the First Amendment's guarantee of free speech and association, because compelling someone to reveal who is [funding](#) political speech will chill vigorous participation in politics.

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The Supreme Court rejected that constitutional challenge in the 1976 campaign finance case, [Buckley v. Valeo](#). Confronted with a law that required disclosure of even very small contributions, the court held that the disclosure laws were justified by three important government interests. First, disclosure laws *can prevent corruption* and the appearance of corruption. Having no more paper bags of cash makes it harder to bribe a member of Congress. Second, disclosure laws provide *valuable information* to voters. A busy public relies on disclosure information more than ever. This was

apparent when California voters recently turned down a ballot proposition which would have benefited Pacific Gas and Electric. PG&E provided almost all of the [\\$46 million](#) to the "Yes on 16" campaign, compared with very little spent opposing the measure. [Thanks to California's disclosure laws](#), PG&E's name [appeared](#) on every "Yes on 16" ad and the measure narrowly went down to defeat. Third, disclosure laws *helpenforce other campaign finance laws*. Worried about foreign money in elections? Disclosure tells you how much is coming in.



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Still, after *Buckley*, the Supreme Court [recognized](#) that groups that [face](#) threats of harassment from either the government or private sources should have a constitutional right to be exempt from the disclosure laws. In 1982, the Court [held](#) that the Socialist Workers Party, which had faced FBI and other harassment, did not have to disclose their contributors to the FEC. This is a narrow exemption for very unpopular groups. But opponents of disclosure have continued to argue that chilling is a problem that affects not just these marginal groups but everyone who might contribute to a political cause.

This argument seemed to gain some traction in the Internet era. No longer is it necessary to trudge down to a government office to wade through disclosure reports. With a Web site like [Fundrace](#), you can plug in your home address (or any address) and see to whom (and how much) your neighbors have donated in federal races. Same-sex marriage advocates created [Eightmaps](#) to find Californians who donated to "Yes on 8," as in Proposition 8, the ballot measure outlawing gay unions. There's an [ongoing lawsuit](#) over whether these Proposition 8 contributors should have been exempt from disclosing their names because of allegations that they have suffered economic boycotts, lost their jobs, and even faced the threat of violence.

The Supreme Court will eventually have to grapple with whether the Internet changes the constitutional calculus—in other words, whether the ease with which we can now discover who has contributed to what means that people won't feel free to give and whether that outweighs the societal benefit of disclosure in preventing corruption, informing voters, and helping to enforce other campaign finance laws. In two cases last term, however, the court reaffirmed its strong support for disclosure rules. In *Citizens United*, the court struck down limits on corporate spending in campaigns; and at the same time, in an 8-1 vote, it endorsed disclosure as the better solution to preventing corruption from large spending. By the same 8-1 count, the court also, last term in *Doe v. Reed*, rejected an argument in a case similar to the Proposition 8 suit. The court ruled that Washington state residents who signed a petition for a voter referendum that would reverse an "everything but marriage" same-sex union law could not shield their identities.

In these cases, only Justice Clarence Thomas argued for a [completely deregulated campaign finance system](#): no limits and no disclosure. But that doesn't mean that the question of disclosure in the Internet era is really settled. The *Reed* majority was fractured, with six of the eight justices writing opinions—plus Thomas in dissent. At the end of the spectrum close to Thomas, Justice Alito suggested that disclosure in the Internet era can chill political activity and argued that exemptions like the one the court allowed for the Socialist Workers Party should be easy to get. On the other end, Justice Scalia strongly supported disclosure laws, writing that "[r]equiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."

The truth is probably somewhere in the middle. As law professors [Bill McGeeveran](#) and [Richard Briffault](#) have persuasively argued, the Internet does have the potential to make individual small contributors skittish about political activity. So we should raise the threshold for disclosure, requiring it for larger contributors and spenders and leaving out the small timers.

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