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VOTING WITH CUES

Elizabeth Garrett *

I. INTRODUCTION

Until recently, the campaign finance reform eliciting nearly uniform support has been disclosure of the source and amount of campaign contributions and expenditures. The widespread acceptance of disclosure comes in part from a gut reaction shared by most commentators and voters: There can be no harm in providing more information to citizens about important aspects of democratic governance, and publicity may root out corruption and increase accountability. As is often the case with gut reactions, this one needs to be critically assessed. Disclosure is not costless. It imposes burdens on those who must comply with complex laws. It also involves costs for citizens who choose to pay attention to the information, process it, and act on the basis of it. Publicity may place a heavy penalty on groups that face retaliation when their support for unpopular positions becomes public, and it may undermine the ability of disliked or distrusted groups to influence policy in ways consistent with their interests. If the costs are high enough, some groups and individuals may no longer contribute to political campaigns or spend money to produce political advertisements, and thus the amount of speech funded by such sources will decline. These costs may be worth paying if the benefits of disclosure are substantial, but before we can reach that conclusion, we must have a better sense of the costs and benefits.

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1. Even the appellants in Buckley v. Valeo, 424 U.S. 1 (1976), admitted that “narrowly drawn disclosure requirements are the proper solution to virtually all of the evils Congress sought to remedy.” Id. at 60 (quoting Brief for Appellants at 171, Buckley (No. 75-436)).
Voting with Dollars\(^2\) puts the question of disclosure in high relief. By defending the counterintuitive notion that anonymity is more desirable than publicity when it comes to campaign finance, Bruce Ackerman and Ian Ayres force disclosure proponents to confront the unarticulated assumptions that prompt their initial gut reaction. Moreover, to the extent that Ackerman and Ayres present their proposal as a realistic blueprint for reform, they challenge others to confront design and enforcement problems that present obstacles to achieving disclosure's objectives.

One of the key components of Ackerman and Ayres's proposal is the secret donation booth.\(^3\) Through the use of blind trusts, their proposal will "assure that [candidates] won't be able to identify who provided the funds" used in political campaigns.\(^4\) However, some information about campaign finance remains available under their proposal. In Part II, I detail the disclosure that Ackerman and Ayres mandate and that which they allow. They do not advocate moving to a system of complete anonymity, and the information that is still available could play a role in informing voters about their ballot choices.

The choice, therefore, is not between no disclosure and full disclosure. Rather, policymakers need to determine what information should be disclosed and in what form. In Part III of this essay, I discuss the literature that studies the relationship between information and the ability of voters to cast their ballots in ways that are consistent with their preferences. This literature focuses on voter competence as the primary objective of electoral institutions. A voter is competent if her choice "is the same choice that she would make given the most accurate available information about its consequence."\(^5\) Both the attributes of the typical voter and the characteristics of the political environment mean that decisions about electoral choices are made in a low-information context.\(^6\) Because most voters have limited time, attention, and in-

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3. Id. at 6.
4. Id.
terest in politics, and because the political realm presents people with complex choices, voter competence depends on the ability to use particular pieces of available information as shortcuts for decision making. In the ideal world, voting cues allow busy people to vote in the same way that they would have if they had spent more time learning about candidates, their platforms, and their abilities.

My focus on voter competence as the primary objective of disclosure laws is different from the traditional justifications. In the past, most judicial and scholarly assessments of mandatory disclosure have viewed it as providing “[s]unlight [which] is said to be the best of disinfectants.” This kind of argument is made in a variety of contexts, from securities laws and conflict of interest rules in business, to lobbying regulations and gift restrictions in the political realm. With respect to campaign finance disclosure, advocates believe that the “light of publicity” can discourage quid pro quo deals between wealthy special interest groups and elected officials. Ackerman and Ayres make a plausible argument, however, that enforced anonymity might serve that objective better, because politicians would not know who was trying to influence them.

However, Ackerman and Ayres overlook a different argument in favor of campaign finance disclosure. This justification emphasizes providing voters information they need to vote competently. Ackerman and Ayres spend only one page of Voting with Dollars discussing the literature on voter competence and disclosure, and do so in a surprisingly incomplete way. Their analysis is not sufficient to allow them to dismiss the informational benefits of disclosure in candidate elections. Justifications based on improving voter competence might also support disclosure statutes in other political contexts, such as regulating lobbying. Such a rationale is most compelling with respect to the regulation of elections, both for candidates and ballot measures, because campaign disclosure laws can force publicity of relevant information close to the crucial moment of decision. Political entrepreneurs, like the press

7. Id. at 8–9.
10. See ACKERMAN & AYRES, supra note 2, at 6.
and challengers, may also bring other information about politicians and issues to the attention of voters, but that data may lack the temporal salience of campaign spending figures. Moreover, information about lobbying interactions or violations of gift rules concerns only incumbents and thus is not helpful in evaluating challengers who have not previously served in elected office.

Finally, in Part IV, I identify issues that supporters of increased disclosure of campaign spending must address in subsequent literature. Many of these issues involve practical questions of how best to design a system that cannot be evaded through the use of sham organizations and complicated arrangements. In addition, further study is required to learn precisely what information promotes voter competence so that statutes can be tailored to produce information that best serves as a shortcut.

II. THE NEARLY SECRET DONATION BOOTH

The Ackerman and Ayres proposal regulates two mechanisms of political funding: money, the traditional source of campaign funds, and vouchers, which comprise the public funding portion of their plan. Each American receives an equal amount of vouchers that can be used only to fund political campaigns for federal candidates. The Citizen Sovereignty Act ("the Act"), proposed by Ackerman and Ayres, limits the amount of money that can be contributed to candidates, political parties, and political organizations for use as campaign expenditures, which are payments used to influence any federal election. The contribution limits are generous compared to current law and are tripled for candidates of small minor parties who will usually need to spend more money to become competitive given the dominance of the two major parties. Although somewhat regulated by the Act, "political communication," which is communication to the general public re-

12. See ACKERMAN & AYRES, supra note 2, at 4.
13. Id. at 204 (Citizen Sovereignty Act § 10).
14. Id. (Citizen Sovereignty Act § 10(e)(5)).
ferring to any federal candidate or political party or containing content of a political nature as described in Federal Election Commission regulations, can be funded by money not subject to contribution limits.

The rules governing anonymity of contribution amount and source differ depending on whether the contribution consists of vouchers or dollars. Individuals who contribute dollars to political candidates must do so in a relatively anonymous fashion, using a blind trust arrangement. At the contributor's option, the trust can publicly acknowledge that a donor has given up to $200 to a particular candidate or political organization. If the donor has given more than $200 and wishes publicity, then the trust is authorized to reveal her name and only that she has contributed over $200.

The justification for the optional partial disclosure of contributions up to a ceiling of $200 is two-fold. First, contributions of $200 or less are not corrupting in the way that the authors believe impairs the integrity of the federal political system. Ackerman and Ayres are primarily concerned with large campaign contributions that may act as subtle bribes, and their intuition that $200 cannot buy much from a federal policymaker seems right. Indeed, sums substantially higher than $200 probably do not buy political favors, so a higher ceiling may be acceptable

15. Id. at 187 (Citizen Sovereignty Act § 2(6)). Section 2(10) provides a few exceptions to this definition, and that of expenditures. The exceptions include news stories, editorials, and the like distributed by a variety of broadcast, print, and Internet media sources. See id. at 188 (Citizen Sovereignty Act § 2(10)). But see Richard L. Hasen, Campaign Finance Laws and the Rupert Murdoch Problem, 77 Tex. L. Rev. 1627 (1999) (criticizing media exceptions in campaign finance laws).

16. See ACKERMAN & AYRES, supra note 2, at 202 (Citizen Sovereignty Act § 8(j)).

17. Id. at 199 (Citizen Sovereignty Act § 8(a)).

18. Id. at 201–02 (Citizen Sovereignty Act § 8(h)(1)).

19. Id. The identity of all contributors and the amount each contributed must be fully disclosed ten years after the election. This provision is designed to avoid misdirection of funds by trust administrators; the authors believe that it will have little, if any, effect on candidate behavior or voter competence.

20. Id. at 96. This conclusion might be disputed by some campaign finance reformers who have advocated contribution limits as low as $100 in some state and local races. See MICHAEL J. MALBIN & THOMAS L. GAIS, THE DAY AFTER REFORM: SOBERING CAMPAIGN FINANCE LESSONS FROM THE AMERICAN STATES 21 (1998) (discussing state initiatives with $100 caps and noting that some were struck down by courts as too low to serve the state interest of discouraging quid pro quo corruption); Eliza N. Carney, Taking On the Fat Cats, Nat'l J., Jan. 18, 1997, at 110 (discussing state initiatives, some successful, supported by a public interest group committed to contribution limits of $100).
even if one is convinced that quid pro quo corruption is a real problem that campaign finance laws should target. Second, Ackerman and Ayres acknowledge that there is an expressive component to a campaign contribution.\textsuperscript{21} It signals the support of the citizen for a candidate and can be used to challenge others to give similar amounts. If there is no risk of the corruption that the authors fear and there is an expressive cost to mandatory anonymity, why not allow disclosure if the contributor asks for it? They note that the $200 ceiling would fully protect the expressive interests of most campaign contributors because more than 80 percent of contributors give $250 or less to a candidate.

The nearly secret donation booth is also used with respect to contributions to “major purpose political organizations.”\textsuperscript{22} These organizations include political parties, which are organizations with the major purpose of nominating or electing federal candidates, and other political organizations that designate themselves as “major purpose political organizations.” Organizations must opt for this designation if they wish to receive vouchers from individuals, which groups cannot spend themselves but must send on to candidates.\textsuperscript{23} Not only does the designation make them eligible to become conduits of public funds, but it is also a way to opt into a regime of some mandated disclosure. The Act requires disclosure of “the date, source, and amount of all transfers of Patriot funds from major purpose political organizations during the past two years.”\textsuperscript{24} Ackerman and Ayres are not worried about disclosure here “[b]ecause the underlying distribution of Patriot dollars

\begin{itemize}
\item \textsuperscript{21} ACKERMAN & AYRES, supra note 2, at 96.
\item \textsuperscript{22} \textit{Id.} at 201 (Citizen Sovereignty Act § 8(e)(5)).
\item \textsuperscript{23} \textit{Id.} at 75 (vouchers collected by political organizations must be handed over to candidates and cannot be used for independent expenditures).
\item \textsuperscript{24} \textit{Id.} at 201 (Citizen Sovereignty Act § 8(e)(5)). It is not clear from the Act whether the individuals who send their vouchers to candidates or organizations can opt to publicize their contribution, all of which would fall under the $200 ceiling. The statute says that all transfers from voucher accounts must be anonymous, apparently without the optional disclosure provided to contributions of money, but it also says that transfers shall be “treated the same as any other contribution under section 8,” \textit{id.} at 211 (Citizen Sovereignty Act § 16(c)-(d)), which includes the optional disclosure feature. The authors' rationale for allowing optional disclosure of money up to the ceiling would apply at least with equal force with respect to vouchers, and the equality of distribution of vouchers provides a further safeguard against the type of corruption Ackerman and Ayres fear. Thus, it seems likely that disclosure would be permitted at the individual's option.
\end{itemize}
is equal, [so] the flow of patriotic [political action committee] or PAC money reflects the views of equal citizens.  

In addition to receiving vouchers, major purpose political organizations can receive money through the nearly secret donation booth, as can other political organizations that do not qualify for public funds. Again, various contribution limits apply as long as the money will be used by the political organization to make expenditures for the purpose of influencing any federal election. Political parties may transfer money from their accounts into candidate accounts without limitation. The amount of such transfers will be fully disclosed, although the individual contributors to the political party can still be cloaked by the nearly secret donation booth. All expenditures by political parties are considered to be coordinated with their candidates; thus, all money spent by parties or contributed by them directly to federal candidates must have come through the nearly secret donation booth.

Political organizations that are not parties cannot make contributions of money to candidates or other political organizations. This treatment of money is sharply different from the rules governing vouchers, which can only be used by political organizations to make contributions to candidates. In contrast, political organizations can fund express advocacy and other political communications with the money that has been contributed to them. Such express advocacy cannot be coordinated with a candidate's campaign because coordination would effectively render the expenditure a prohibited contribution. The Act mandates that political organizations publicly reveal the amount of their expenditures for independent expenditures, although the individuals who con-

25. Id. at 74.
26. Id. at 124–26.
27. Id. at 203–05 (Citizen Sovereignty Act § 10).
28. Id. at 205, 208 (Citizen Sovereignty Act §§ 10(j), 13(c)).
29. Id. at 202 (Citizen Sovereignty Act § 8(h)(2)).
30. Id. at 199 (Citizen Sovereignty Act § 8(a)). Special rules apply to state and local parties so that the new regulations primarily target money that influences federal campaigns. See id. at 275 n.23. National parties cannot transfer money to state or local parties. See id. at 288 n.5.
31. Id. at 203–05 (Citizen Sovereignty Act § 10).
32. Id. at 207–08 (Citizen Sovereignty Act § 13(b)).
33. Id. at 193 (Citizen Sovereignty Act § 5(b)(1)) (providing for reporting of all expenditures, and requiring such reports be made public via the Internet in section 5(c)).
tribute are required to send their money through the nearly secret donation booth and thus can remain anonymous. In addition, political organizations can set up special blind trusts to receive unlimited contributions of money for political communications, a term defined more broadly than political expenditures. Again, the amount of the payments by political organizations for political communications must be disclosed along with the purpose of the expense. But the blind trust arrangement will cloak the identity of the individual donors to political communication blind trusts, unless they ask to be disclosed up to the $200 ceiling.

Finally, Ackerman and Ayres contemplate that some political activity conducted through organizations and by individuals would not be presumptively anonymous. The Act exempts from its partial anonymity regime organizations that do not receive vouchers or money through a nearly secret donation booth and that do not coordinate or affiliate with any entity that does. Such an organization has opted to operate outside the system and is not bound by the rules concerning anonymity. It can not only reveal how much it is spending and from what sources; it can also provide proof of those assertions. The statute requires that such organizations can spend money in campaigns only for political communications, which can refer to a candidate or political party but cannot be intended to influence any federal election. They cannot use the money for independent express advocacy.

34. Id. at 202 (Citizen Sovereignty Act § 8(j)). Separate blind trusts are required because contributions for political communications, rather than expenditures, are not limited by the statute's contribution limitations.
35. Id. at 191 (Citizen Sovereignty Act § 3(b)(3)).
36. See id. at 201–02 (Citizen Sovereignty Act § 8(h)(1)).
37. Id. at 202 (Citizen Sovereignty Act § 8(j)). Section 8(j) of the Act makes it clear that a few political organizations—those that are not political parties, that are not organizations that accept vouchers, that do not spend money to influence federal campaigns, or that are not affiliated with candidates or organizations that must raise money through blind trusts—can raise money outside the nearly secret donation booth and use it for political communications. Id. (Citizen Sovereignty Act § 8(j)).
38. Id. at 205 (Citizen Sovereignty Act § 10(k)).
39. This reading of the statute was confirmed by one of the authors. See E-mail from Ian Ayres, author of VOTING WITH DOLLARS, to Elizabeth Garrett, Professor of Law, University of Chicago Law School (Nov. 8, 2002, 11:13 a.m. CST) (on file with author) (stating that "no group can use private money raised outside the blind trust to engage in express advocacy—even if the group is independent of all other groups candidates and parties," and noting that "[t]hey could spend the money on office furniture, cantaloupes, but they can't use the money for express advocacy.")
Apparently, any disclosure by unregulated political organizations is voluntary; the model statute does not have mandatory disclosure provisions for communications funded by money raised outside of the nearly secret donation booth. Disclosure of communications that are not intended to influence a federal election is more problematic under current jurisprudence than disclosure aimed at express advocacy. However, because the definition of "political communication" requires that the advertisements refer to a candidate or meet some additional test provided by the Federal Election Commission, some constitutional concerns may be alleviated. In addition, disclosure provisions are ubiquitous in laws regulating initiatives and referendums, a context in which election-related speech has much in common with other issue-oriented political speech. It is not clear from the text or the statute whether Ackerman and Ayres would favor mandatory disclosure in this realm, to the extent it is constitutionally permissible, or whether they believe it is optimal to leave it to the entities themselves to decide whether to publicize the amount of money they are spending and the source of their funds.

Although nothing in the Act states so explicitly, I assume that individuals can use unlimited amounts of their own money to fund political speech, as long as they do not coordinate their

40. See, e.g., Chamber of Commerce of the United States v. Moore, 288 F.3d 187, 197, 199 (5th Cir. 2002) (holding disclosure statute constitutional because it applied only to independent expenditures for express advocacy, but finding Chamber of Commerce ad did not meet Buckley’s "magic words" test and thus could not be regulated); see also Buckley v. Valeo, 424 U.S. 1, 44 n.52 (1976) (providing what has become the “magic words” test). See generally Lillian R. BeVier, Mandatory Disclosure, “Sham Issue Advocacy,” and Buckley v. Valeo: A Response to Professor Hasen, 48 UCLA L. REV. 285 (2000) (arguing that very few disclosure provisions in the campaign finance arena should survive constitutional scrutiny); Richard Briffault, Issue Advocacy: Redrawing the Elections/Politics Line, 77 Tex. L. Rev. 1751 (1999) (discussing constitutional issues relating to regulation of issue advocacy in candidate campaigns, including disclosure provisions); Richard L. Hasen, The Surprisingly Complex Case for Disclosure of Contributions and Expenditures Funding Sham Issue Advocacy, 48 UCLA L. Rev. 265 (2000) (providing analysis of constitutional issues raised by regulation of “ sham” issue advocacy and other political speech related to elections).

41. See Buckley v. Am. Constitutional Law Found., 525 U.S. 182, 202–03 (1999) [hereinafter ACLF] (dictum strongly suggesting that disclosure of the identity of proponents of ballot question and total amount spent in a campaign is constitutional); Citizens Against Rent Control v. Berkeley, 454 U.S. 290, 299–300 (1981) (stating, in dictum, that the “political system [in the context of direct democracy] will be adequately protected if contributors are identified in a public filing revealing the amounts contributed; if it is thought wise, legislation can outlaw anonymous contributions”); First Nat’l Bank of Boston v. Bellotti, 435 U.S. 765, 792 n.32 (1978) (dictum noting that identifying source of advertising in issue campaigns may be constitutional because it allows “people . . . to evaluate the arguments to which they are being subjected”).
spending with a candidate's campaign. Such political speech can be express advocacy as well as political communications, and individuals can make public, in a credible way, how much money they are spending for such independent expenditures.\textsuperscript{42} Again, it is up to the individuals whether to disclose their spending. Whether laws could force disclosure of expenditures by individuals for political communications other than express advocacy may be more problematic than broad mandatory disclosure requirements of spending by political organizations. There is a line of cases providing strong constitutional protection for anonymity with respect to some political speech by individuals.\textsuperscript{43} I will return to these questions.\textsuperscript{44} At this point, it is sufficient to note that the Ackerman and Ayres proposal does not contain mandatory disclosure provisions relating to political speech funded with money raised outside the nearly secret donation booth, although voluntary publicity is possible.

Ackerman and Ayres are not concerned that groups and individuals will use voluntarily disclosed payments to "bribe" elected officials and gain special interest benefits, thereby circumventing the nearly secret donation booth and undermining the reform. Echoing analysis from \textit{Buckley v. Valeo},\textsuperscript{45} they conclude that candidates will discount such help because they do not control how the resources are deployed and thus will not receive the same benefit from independent expenditures as from direct contributions.\textsuperscript{46} Moreover, once the system is flooded with public money through the use of vouchers, candidates will further devalue the benefit of independent expenditures, and therefore rational political actors will engage in less of this now cheapened political activity.\textsuperscript{47}

Finally, the administrators of the blind trust are required to widely publicize certain information about the mix of vouchers and money that candidates and political organizations receive.\textsuperscript{48}

\textsuperscript{42} See Ackerman & Ayres, supra note 2, at 205–06 (Citizen Sovereignty Act § 11).


\textsuperscript{44} See infra text accompanying notes 97–102 and 105–13.

\textsuperscript{45} Buckley, 424 U.S. at 47.

\textsuperscript{46} ACKERMAN & AYRES, supra note 2, at 111–27.

\textsuperscript{47} Id. at 121–23.

\textsuperscript{48} Id. at 201 (Citizen Sovereignty Act § 8(e)).
The information posted on the Internet for each political organization and candidate will include the total amount of vouchers and money contributions and transfers over the last two years, and also the ratio of vouchers to money contributions and transfers over the last two years.\(^{49}\)

This reading of the statute reveals that Ackerman and Ayres do not really mandate anonymity. In summary, the following disclosure will still take place:

- At the individual's option, the fact that she contributed to a candidate or political organization and the amount that she contributed up to $200. This applies to contributions of money and perhaps to vouchers as well.\(^{50}\)
- The amount of vouchers and money transferred from political parties to candidates.\(^{51}\)
- The amount of vouchers contributed to candidates by political organizations.\(^{52}\)
- The amount of money spent on express advocacy and political communication by political organizations from funds received through the nearly secret donation booth.\(^{53}\) The identities of those contributing to such organizations through the nearly secret donation booth, along with the amount they contributed up to $200, can be revealed if the contributors request it.\(^{54}\)
- At the organizations' option, the amount and source of money spent on political communications by organizations that are unaffiliated with any candidate, political party, or political organization receiving vouchers or money through the nearly secret donation booth.\(^{55}\) Disclosure can be accompanied by proof that makes it credible. Similarly, individuals who spend money on political communications or express advocacy that is uncoordinated with a candidate, a political party, or a regu-

\(^{49}\) Id. (Citizen Sovereignty Act § 8(c)).
\(^{50}\) Id. at 201–02 (Citizen Sovereignty Act § 8(h)(1)).
\(^{51}\) Id. at 202 (Citizen Sovereignty Act § 8(h)(2)).
\(^{52}\) Id. at 211 (Citizen Sovereignty Act § 16(d)).
\(^{53}\) Id. at 199 (Citizen Sovereignty Act § 8(a)).
\(^{54}\) Id. at 201–02 (Citizen Sovereignty Act § 8(h)(1)).
\(^{55}\) See id. at 202 (Citizen Sovereignty Act § 8(j)).
lated political organization, can reveal, in a credible way, the amount of money that they spent.\textsuperscript{56}

- Information about the ratio of vouchers to money in the accounts of candidates and political organizations.\textsuperscript{57}

Thus, some information will still be available for voters and others, some of it mandatory and some of it not prohibited if the entity spending money wants publicity. In this way, the Ackerman and Ayres reform is consistent with other disclosure proposals, none of which requires the fullest disclosure imaginable. Instead, policymakers design disclosure to provide information that will be helpful to real people who have priorities other than politics and voting and to provide it in such a way that it is useful in their decisionmaking process. Many of them will rely on third parties like the press and challengers to bring the information to their attention, so thought should be given to structures that facilitate discovery of the data by these intermediaries, as well as allowing for direct encounters by citizens themselves. The question for policymakers is never as easy as full disclosure versus anonymity; it is always a question of how to design institutions so that voters cast ballots in ways that are consistent with their policy preferences.

III. VOTING CUES AND VOTER COMPETENCE

In the page or so in \textit{Voting with Dollars} that discusses the value of disclosure for voters and the electoral system, Ackerman and Ayres adopt an appropriately realistic view of American voters: "It is precisely because most Americans aren’t inclined to spend much time and energy on political learning that campaign finance becomes important."\textsuperscript{58} This realism is refreshing because much legal scholarship in the campaign reform area depends on one of two rose-colored-glass views of American voters. Either voters are capable of and willing to learn about candidates and issues and then to make fully informed decisions at the polls, or

\begin{itemize}
\item \textsuperscript{56} See \textit{id.} at 189, 203, 204 (Citizen Sovereignty Act §§ 2(17), 10(b), 10(h)).
\item \textsuperscript{57} \textit{id.} at 201 (Citizen Sovereignty Act § 8(e)).
\item \textsuperscript{58} \textit{id.} at 27. \textit{But see} Richard L. Hasen, \textit{Vouchers and Buckley: The Need for "Regime Change,"} 37 \textit{U. RICH. L. REV.} 1047, 1060 n.84 (2003) (arguing that Ackerman and Ayres are inconsistent in their view of voters).  
\end{itemize}
they will become such civically engaged citizens if the government merely gives them the right incentives.

Although some voters live up to the ideal of civic virtue, most people will always have priorities in their lives other than elections and politics and will spend little of their scarce time and attention finding and processing political information. These people, some of whom will occasionally vote despite other demands on their time, should not be criticized or penalized. They are not acting badly. They are acting rationally given the limited amount of time for professional and personal activities, including spending time with family, relaxing with friends, and engaging in satisfying work. Indeed, even most civically engaged voters are not well informed about every race and ballot question, and their level of knowledge declines as they move from salient races to more obscure ones.

This reality does not mean that voters are doomed to cast their ballots incompetently, supporting candidates who will pursue policies that they prefer only by luck. Although Ackerman and Ayres argue correctly that "if most voters pay scant attention to politics, they won't take the time to go through the lengthy lists of donors published in the name of 'full information,'" voter competence does not depend on this level of civic engagement. In the face of scarce time and attention and complex political choices, ordinary people seek shortcuts to help them vote competently with limited, relatively easy-to-obtain information.

59. Dan Ortiz has characterized this group of voters as "civic slackers" or "civic slobs," in contrast to the virtuous "civic smarties." See generally Daniel R. Ortiz, The Democratic Paradox of Campaign Finance Reform, 50 STAN. L. REV. 893 (1998) (using slacker terminology); Daniel R. Ortiz, The Engaged and the Inert: Theorizing Political Personality Under the First Amendment, 81 VA. L. REV. 1 (1995) (using slob terminology). His work has drawn attention to the importance of adopting campaign reform that is based on a realistic view of voters, and his terminology vividly illustrates the differences between the two groups, although the normative overtones are unfortunate.

60. ACKERMAN & AYRES, supra note 2, at 27.

61. See, e.g., ARTHUR LUPIA & MATHEW D. MCCUBBINS, THE DEMOCRATIC DILEMMA: CAN CITIZENS LEARN WHAT THEY NEED TO KNOW? 37 (1998) ("In politics as elsewhere, people respond to the bounds that the twin scourges of scarcity and complexity impose upon them.... [P]eople lack detailed information about almost everything, yet they do not regret most of the numerous choices that they make each day. It is wrong to conclude that people who lack detailed political information cannot make reasoned choices."); John Mueller, Democracy and Ralph's Pretty Good Grocery: Elections, Equality, and the Minimal Human Being, 36 AM. J. POL. SCI. 983, 991 (1992) (defending a minimalist conception of democracy, noting that "[i]n a democracy, people do not need to be good or noble, but merely to calculate their own best interests, and, if so moved, to express them"); see also
entists and cognitive psychologists have worked to identify the shortcuts or heuristics that ordinary citizens can use to vote competently, that is, to vote with limited information as they would if they had full information. Given the amount and quality of this scholarship, Ackerman and Ayres’s cursory dismissal of the value of targeted disclosure statutes is surprising. It is also unnecessary because their proposal is not, despite their rhetoric, one that implements anonymity, just as no real-world disclosure statute comes close to providing full disclosure. In all cases of campaign reform, the question is what information should be publicized and in what form.

Perhaps Ackerman and Ayres’s abrupt treatment of disclosure stems from their belief that campaign finance laws should be aimed primarily at eliminating bribery-like corruption that they see infecting the political process. Because they adopt a realistic view of voters as busy people who pay little attention to politics, they are not convinced that any disclosure will bring enough light to bear on special interest deals to enable voters to hold representatives accountable for questionable, private-regarding statutes they support. “At the end of the day,” they write, “mandated disclosure may make us feel good about ourselves but it does little to insulate the political sphere from the corrupting influence of unequal wealth.”62 I have written elsewhere that this notion of institutional corruption, the idea that propels many campaign finance reforms including Ackerman and Ayres’s and that primarily structures the current judicial analysis, is largely unpersuasive as a justification for these laws.63 In a similar vein, David Strauss has recently questioned whether Ackerman and Ayres correctly identify the crucial concerns that a campaign finance reform proposal might usefully target.64 Others have cast doubt on the em-

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62. ACKERMAN & AYRES, supra note 2, at 27.


64. See David Strauss, What’s the Problem? Ackerman and Ayres on Campaign Fi-
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Empirical basis for the claim that bribery-like behavior is pervasive in the political process. Even if Ackerman and Ayres persuade the reader that quid pro quo corruption is a substantial problem and one that can be combated by campaign finance restrictions in a world where other, more significant avenues of political influence remain uncontrolled, their narrow focus on this problem causes them to overlook other benefits of disclosure. Most notably, they slight the argument that particular kinds of information may allow average voters to devise shortcuts that can improve their civic competence.

The insight provided by a realistic view of voters and an emphasis on enhancing their competence does not lead to a regime of full disclosure. Thus, Ackerman and Ayres attack a straw man when they argue against the "full disclosure" paradigm. Not only is it not the case, given voters' capabilities, that more information is always a good thing, but too much information can overwhelm the ability of average Americans to process and understand information and may result in their tuning out data that could provide helpful cues. Of course, information is usually filtered through intermediaries like the press before it reaches average citizens, so worries about overload can be overstated.

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65. See, e.g., Stephen Ansolabehere et al., Why is There So Little Money in U.S. Politics? 20-22 (2002) (unpublished study on file with author) (arguing that companies are not spending what one would expect if quid pro quo deals motivate contributions and providing alternative explanations); Thomas E. Mann, Political Science and Campaign Reform: Knowledge, Politics, and Policy 24-25 (2002) (paper delivered at the 2002 Annual Meeting of the American Political Science Association) (unpublished manuscript, on file with author) (summarizing "vast bulk" of scholarly research as being "overwhelmingly negative" about the claim that campaign contributions corrupt the political process by "buying votes in Congress").

66. For example, wealthy groups and individuals spend substantially more on lobbying to influence policy outcomes than they do on campaign contributions and expenditures. See Jeffrey Milyo et al., Corporate PAC Campaign Contributions in Perspective, 2 BUS. & POL. 75, 83-84 (2000) (finding that lobbying expenditures were substantially greater than money spent by PACs in campaigns, and even charitable giving by corporations far outstripped either kind of expenditures); see also Samuel Issacharoff & Pamela S. Karlan, The Hydraulics of Campaign Finance Reform, 77 TEX. L. REV. 1705, 1714 (1999) (worrying that restrictions on campaign contributions will encourage wealthy interests to increase their use of other mechanisms for political influence, many of which are more potentially corrupting than campaign spending).

67. See, e.g., ACKERMAN & AYRES, supra note 2, at 4.
Nonetheless, targeting disclosure requirements to the information most likely to improve voter competence is sensible because it makes that information more salient and accessible for intermediaries, as well as for voters who happen upon the data themselves.

Thus, the concern for policymakers, including Ackerman and Ayres, should be to design a system that works to provide some helpful information to voters in a way that they can understand and at a time when it will influence their decisions.\textsuperscript{68} Institutions are crucial for voting cues to work effectively. For the same reasons that people need heuristics, they may need help in figuring out which shortcuts promote competence and which undermine it, and in discovering what information can serve as the basis for a successful shortcut.\textsuperscript{69} Consider, for example, one of the best and most influential voting cues: party affiliation.\textsuperscript{70} The party cue appears on the ballot in many elections, and party institutions in and out of government stake out somewhat divergent policy positions so that the cue contains informational content. Even in electoral contexts where the party cue will not appear on the ballot at the important moment of choice, such as initiative campaigns and primary battles, partisans seek through endorsements and other communication to associate the familiar party cue with a particular vote.

Another effective voting shortcut is to rely on information that reveals which groups support a candidate and the intensity of

\textsuperscript{68} Arthur Lupia, \textit{Deliberation Disconnected: What it Takes To Improve Civic Competence}, \textit{LAW \\& CONTEMP. PROBS.}, Summer 2002, at 133, 142-47 (arguing that key factors for information to influence outcomes are memory, attention, and timing).

\textsuperscript{69} See Paul M. Sniderman, \textit{Taking Sides: A Fixed Choice Theory of Political Reasoning}, in \textit{ELEMENTS OF REASON: COGNITION, CHOICE, AND THE BOUNDS OF RATIONALITY} 67, 68 (Arthur Lupia et al. eds., 2000) ("If [citizens] are in a position to overcome their informational shortfalls by taking advantage of judgmental shortcuts, it is because public choices have been organized by political institutions in ways that lend themselves to these shortcuts.").

For group support to serve as a heuristic, at least three conditions must be met. First, voters must correctly associate the group with a particular ideology or policy position that allows them to draw inferences about the candidate's ideology and likely behavior in office. Second, the information conveyed by the group's support must be credible. In other words, the voters must be able to trust that the group really does support the candidate and is not acting strategically to send a false signal. Third, voters must be able to learn of the group's support; it must be publicized, preferably at a time when it will affect voters' decisions.

Several types of groups might meet the first condition because they are associated easily and correctly in voters' minds with particular policies. Some interest groups are strongly associated with a particular ideology or at least with a position on an issue that might also provide information about larger policy commitments. Examples of such ideological groups are the National Rifle Association ("NRA"), the Sierra Club, the National Abortion and Reproductive Rights Action League, and U.S. Term Limits, Inc. These groups actively work to develop ideological reputations and to publicize clear-cut positions on issues important to them. They serve the goals of their members by developing programs to implement ideological or policy goals, and their leaders spend time determining which candidates will further these goals. Such groups have an incentive to make sure the public knows what they stand for so that citizens who care about these issues become dues-paying members. In addition, they rely on their reputations in order to influence policymakers who know the groups can offer informational, lobbying, drafting, and other support in the legislative process. Ordinary voters can free-ride on all this information about groups and their support of candidates to determine what programs candidates are likely to implement and what ideological commitments will motivate their decisions.

71. See Michael X. Delli Carpini & Scott Keeter, What Americans Know About Politics and Why It Matters 49–53 (1996) (describing the use of membership in groups as a shortcut to broader conclusions' about ideology); Paul M. Sniderman et al., Reasoning and Choice: Explorations in Political Psychology 113 (1991) (noting that voters can draw conclusions about ideology and positions on particular issues from knowledge of the groups to which candidates belong).

72. See Lupia & McCubbins, supra note 61, at 207 (discussing incentives of peak organizations "to take coherent and reliable policy positions on issues important to their members" and "to create reliable brand names that voters can use as a cue").
Not only ideological groups provide helpful information for voters; knowing which economic interests support particular candidates and the strength of their support can also serve as a heuristic. Examples of this type of group are businesses, trade organizations, and labor unions. Businesses work to advance the interests of their shareholders, and it is often clear to voters with knowledge of everyday life which general policies will help major industries and which will hurt them. In a study of voting on insurance-related ballot initiatives, political scientist Arthur Lupia compared voters who knew nothing about the initiatives' details but knew the insurance industry's preference, with voters who were "model citizens" in that they consistently gave correct answers to detailed questions about the ballot questions. He also included in the study a third group of voters who knew nothing about the ballot question or about the insurance industry's position. The first two groups of voters demonstrated similar voting patterns, while the completely ignorant voters had very different voting patterns. This finding, supported by other studies, convinced Lupia that the position of an economic group with known preferences on an issue can serve as an effective shortcut for ordinary voters, substituting for encyclopedic information about the electoral choice.

Just as firms can provide information, it is helpful for voters to know that the National Education Association or other teachers' unions support a candidate because they then get a sense of the kind of educational reforms the candidate is likely to support. The support of the Independent Petroleum Association of America ("IPAA"), the trade organization for independent oil and gas producers, might also provide a voting cue because it is clear to some ordinary people what kinds of policies will advance the economic

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75. Id.; see also Paul Milgrom & John Roberts, Relying on the Information of Interested Parties, 17 RAND J. ECON. 18 (1986) (using economic model to confirm findings that voters can use certain credible information provided by interested parties to make competent decisions).

76. Lupia, supra note 74, at 72.
fortunes of the IPAA membership. Accurate conclusions about candidates’ platforms can be drawn from support of groups such as law enforcement officers’ organizations, the American Medical Association, large agricultural concerns like Tyson Foods or Archer Daniels Midland, or the automobile industry.

The cue based on support of economic organizations may be less helpful than the cue provided by ideological groups for a number of reasons, however. Some economic interests contribute to both parties and thus dilute the strength of the cue. That is not the case for all such groups; for example, certain groups and businesses like the American Trial Lawyers Association (“ATLA”), the American Federation of Labor-Congress of Industrial Organizations (“AFL-CIO”), or tobacco companies have contributed overwhelmingly to candidates of one party. Other companies are frequently double-givers with contributions to both parties, presumably because they are mainly working to make their issues salient to all lawmakers in order to gain access and to set the agenda, no matter who wins the election. In addition, firms and other economic groups do not invest in a political brand name in the same way that ideological groups do; therefore, voters may not be able to easily associate a particular firm or industry with clear policy positions. Nonetheless, knowing that the steel industry strongly supports a candidate allows many voters to draw valid inferences about her views on trade policy, just as knowing of the American Petroleum Institute’s support might allow accurate conclusions about the candidate’s view of energy or environmental policies.

77. See Press Release, Common Cause, You Get What You Pay For (Sept. 2000), available at http://www.commoncause.org/publications/sept00/softmoney/sept00softmoney.pdf (providing figures for various companies and trade organizations, including double-givers and those that gave primarily to one party); Press Release, Public Campaign, Whoever Wins, They Win (Mar. 3, 2000), available at http://www.publiccampaign.org/press_releases/pr3_3_00.html (providing figures relating to top double-givers in 2000 presidential election); see also MALBIN ET AL., supra note 73, at 14–15 (noting that pragmatic groups tend to give to both parties, party leaders, and key legislators); Brody Mullins, The Democrats’ New Donations, 33 NAT’L J., 2928, 2928 (noting that giving patterns change when the party in power of Congress shifts). Although ideological groups may also change their activities to account for changes in the balance of power in government, they generally do so in ways that preserve or clarify their reputations. For example, the American Civil Liberties Union recently hired former Representatives Dick Armey and Bob Barr to advance its issues in the new Republican Congress. See Jill Lawrence, Conservative Favorites To Join ACLU, USA TODAY, Nov. 25, 2002, at 2A. This decision was motivated by the Republican majorities in both houses after the 2002 elections, but it also clearly signals that the ACLU’s agenda is often more libertarian than it is politically liberal.
Some groups cannot be classified easily into one of these two categories, but knowing of their support for candidates may be helpful to some voters. For example, the American Association of Retired Persons ("AARP") and the Chamber of Commerce are interested in a variety of issues and thus may not have the clear political brand name of National Right to Life, the Concord Coalition, or other more targeted ideological groups. Nonetheless, average people know enough about the objectives of these organizations to draw some conclusions about the platforms pursued by candidates they support. It is likely that many voters will understand that a candidate supported by the AARP is very likely to have a particular position on a prescription drug program as part of Medicare and on reform of the Social Security system. Similarly, the Chamber of Commerce's support signals information about a candidate's position on tax reform, labor policy, and regulation.

But more is required for a successful voting cue than merely being able to associate certain groups with particular policy positions. Voters must be able to learn that a group supports a candidate, and they must believe that the information about the group's support is credible. Information is credible when it is costly to the speaker. Information about group support is trustworthy when it is backed up by money, or when there is some reputational cost to the group if it lies. In some cases, the groups themselves publicize their support because they want people who share their objectives to know which candidates will pursue their policies. They understand the strength of the group-support voting cue and seek to encourage its use by voters. Ideological groups in particular advertise their support in the media and through slate mailings and other communications. They use endorsement systems to provide voters with a sense of how strongly they support particular candidates, perhaps by rating them according to some ideological litmus test. Their endorsements are credible because ideological groups have an incentive to establish clear and consistent reputations, for reasons other than influencing voters; their reputation is vital both to attracting members and to influencing legislation when they lobby policymakers. If they support candidates who will undermine their goals, they will not only

78. See, e.g., Lupia & McCubbins, supra note 61, at 53–59 (describing how observable costly effort allows voters to assess credibility of cue).
harm their political objectives, but they will also dilute their reputation.

Another way to learn of a group's support is to learn how they are spending their money in campaigns. Knowing that the ATLA donated substantially to a particular candidate provides a credible signal to voters of ATLA's perception of the candidate's platform and likely behavior in office. Again, groups themselves sometimes voluntarily make available information about their financial support because they want to provide credible signals to like-minded voters. In such cases, mandatory campaign finance disclosure laws may do little to enhance voter competence because information about endorsements and campaign spending is already publicly available.

Even when some trustworthy information is available through the voluntary actions of groups, mandatory disclosure laws remain important to publicize the group-support cues for several reasons. First, groups supporting candidates through endorsements or campaign contributions know that they provide signals for voters who oppose their policies, as well as those who support them. High profile ideological groups such as the NRA provide cues to all voters, some of whom will support candidates on the basis of the NRA endorsement and some of whom will oppose them for the same reason. Similarly, some voters will react positively to a teachers' union endorsement; others will vote against the endorsed candidate solely because she is the choice of the union. Publicizing such a group's support beyond the members of the group, or beyond the universe of voters disposed favorably toward the group's objectives, may work counter to its objectives. Thus, groups may seek to target their endorsements so that the information reaches only their members and other sympathetic people.

Wider dissemination of the information is crucial, however, to improve the competence of all voters, including those who would react negatively to the signal provided by a particular group's support. In competitive campaigns, challengers and those supporting them have incentives to publicize groups supporting their opponents if they expect the information to produce a backlash among some voters. The media may also work to inform the public about the groups supporting all candidates. Mandatory disclosure of groups' financial support for candidates further ensures that all this information will be broadly available so that voters
are not dependent on the vagaries of political competition for disclosure. Systematic presentation of the information assures that the information is provided in a timely way and in a central location that makes discovery relatively simple. Whether this is a vast improvement over the information environment that would have resulted naturally will differ in each case depending on how competitive the race is and how energetic the press and other watchdog groups are.

Second, information about financial support may be less amenable to manipulation than endorsements, and therefore more credible to voters. Endorsements can be cheaply mimicked by groups that are not as committed to particular ideological platforms as well-known groups are. Such imitations dilute the impact of endorsements generally. For example, some endorsements sent to voters in slate mailings are purchased by the candidates, suggesting that the groups may have mixed motives when they announce their slate.\textsuperscript{79} Although the fact that the endorsement was paid for must be indicated on the slate mailing, groups provide the notice as unobtrusively as possible.

The groups that engage in these practices are not as concerned about their reputations as more established ideological groups. They often use similar names, a practice that may lead to a general dilution in the informational content of endorsements. To protect the integrity of their brand name and the credibility of their endorsements, ideological groups will try to correct any misinformation produced by opponents or others. Thus, the misinformation campaigns themselves may produce valuable cues for voters. If a group attempts to mischaracterize the views of the Sierra Club, for example, the resulting campaign may credibly reveal both groups’ objectives as the Sierra Club works to clarify its position.

Most voters will not spend a great deal of time verifying information or obtaining more information beyond that which they learn as a byproduct of everyday activities. That is, after all, why they rely on shortcuts in the first place. They are therefore more susceptible to misinformation than are civically virtuous voters, and as a defensive response, these voters may dismiss informa-

tion provided by endorsements because it contains too much noise. Given the possibility of voter confusion from endorsements, information about financial support may generally be more salient and credible to some voters. Ackerman and Ayres understand the notion that actions speak louder than words; one of their justifications for moving to a world of relative anonymity, is to make any claims of significant donations "cheap talk" that will not cause a candidate to cater to wealthy interests. Of course, concerns about manipulation of signals implicate voting cues based on financial support of candidates as well as those based on endorsements. Because campaign spending is a more costly signal than endorsements, however, fewer groups will use this tactic strategically.

In contrast to the situation with respect to ideological groups, learning of the support for candidates by economic groups may be more difficult for voters. In a few cases, businesses, unions, and trade organizations may widely publicize their support, whether by public endorsements or releasing information about their campaign spending. In other cases, they will try to target the publicity so that it reaches only their members, shareholders, employees, or other sympathetic people, particularly if they fear negative voter reaction to news of their support. Shaun Bowler and Todd Donovan found that heavy, one-sided spending in initiative campaigns may increase negative voting if the spending reveals that some disfavored group, like tobacco companies or insurance companies, is a major supporter of the ballot proposal. In competitive campaigns, groups may not be able to control how widely the information is disseminated, but absent systematic

80. ACKERMAN & AYRES, supra note 2, at 28.

81. One study of the use of limited information to form opinions suggests that concerns of manipulation or inaccuracies are overstated. See BENJAMIN I. PAGE & ROBERT Y. SHAPIRO, THE RATIONAL PUBLIC: FIFTY YEARS OF TRENDS IN AMERICANS' POLICY PREFERENCES 381–82 (1992). But see id. at 356 (discussing the difficulty of identifying and studying instances of manipulation); see also Shaun Bowler & Todd Donovan, Do Voters Have a Cue? Television Advertisements as a Source of Information in Citizen-Initiated Referendum Campaigns, 41 EUR. J. OF POL. RES. 777, 788, 790 (2002) (discussing cues provided by television ads and voter responses that may compensate for any attempted manipulation).

82. SHAUN BOWLER & TODD DONOVAN, DEMANDING CHOICES: OPINION, VOTING, AND DIRECT DEMOCRACY 53–55 (1998) (suggesting also that the noise that the expenditure of so much money produces may result in defensive "no" voting as the electorate begins to worry that a substantial policy change will have unexpected deleterious consequences).
and mandatory disclosure, some groups may make substantial and successful efforts to avoid publicity.

Such economic groups may be the type of organizations that Ackerman and Ayres describe as "notorious."\(^\text{83}\) In their brief discussion of voting cues, Ackerman and Ayres focus on notorious groups whose financial support is seen as "tainted."\(^\text{84}\) Two types of groups might fit this description. Some ideological groups are notorious to some voters because of the policies they support, but they are attractive to other voters for the same reasons. Candidates who support their ideologies will not view their support as tainted, nor will the people who are likely to vote for them. Indeed, their notoriety allows their support to serve as an effective voting cue because many voters have an accurate perception of their ideological commitments. The other, more interesting group of notorious organizations comprises economic interests who are perceived to pursue policies at odds with the preferences of ordinary people, such as insurance companies, tobacco companies, big oil companies, and the like. Contrary to Ackerman and Ayres's suggestion that information about this sort of "tainted" support has no effect on voters,\(^\text{85}\) studies suggest that it can produce a negative voter reaction. Lupia's work studying the insurance industry, as well as Bowler and Donovan's analysis, demonstrates that information about these notorious economic groups may increase voter competence, often in ways that the economic groups will not like.\(^\text{86}\)

83. ACKERMAN & AYRES, supra note 2, at 27.
84. Id.
85. Id.
86. In addition, Ackerman and Ayres cite Elisabeth Gerber's work studying the role that certain groups play in direct democracy, and they acknowledge that this work suggests that voter backlash occurs in the context of direct democracy. See ACKERMAN & AYRES, supra note 2, at 250 n.2 (referring to ELISABETH R. GERBER, THE POPULIST PARADOX: INTEREST GROUP INFLUENCE AND THE PROMISE OF DIRECT LEGISLATION 145 (1999)). Although they observe that no study has found similar results in candidate elections, they provide no reason to conclude that tests of voting in direct democracy do not shed light on voters' behavior generally. On the contrary, voting shortcuts should also help voters seeking to vote competently for candidates. In many candidate elections, the ballot already provides the cue of party affiliation so the information environment at the crucial moment of voting is richer than it is when an initiative is at stake. However, the party cue is not available in some elections for candidates. For example, the party cue is not available in primary battles; in those races, voters need cues like that of group support. Additional cues may improve voter competence even in elections that provide party cues because the choice among candidates, who represent bundles of positions on issues, may actually be even more complex than decisions about ballot questions, which generally con-
A focus on these notorious groups is important for any assessment of disclosure statutes because these groups are the most likely to strongly resist publicity. If these groups know that knowledge of their support actually produces a public reaction against their candidates, they will work to hide the information. They may not even publicize their support to others who share their objectives for fear of wider publicity. Certainly, they will not publicly endorse the candidates. Thus, mandatory disclosure of campaign spending may be the only way to provide voters with credible signals based on notorious-group-support.

In the current system, there is evidence that these notorious groups work diligently to hide their campaign spending from disclosure. Indeed, the law requiring that political organizations governed by section 527 of the Internal Revenue Code disclose the source of their funds and their political expenditures was driven by the awareness that groups were using these “stealth PACs” to evade the disclosure requirements of the Federal Election Campaign Act. Data that Daniel Smith and I are beginning to compile and assess appears to show that notorious groups that seek to influence initiative and referendum votes are evading state disclosure statutes by organizing as educational committees, nonprofit organizations, or other kinds of “veiled political actors” not covered by disclosure statutes. In this way, notorious groups are able to spend money freely and often avoid disclosure, a situation that nearly occurred in Florida this fall when Philip Morris tried to conceal the amount of money it was spending to defeat an anti-smoking initiative by sending the money through an unregulated entity called the Committee for Responsible Solutions. Occ-

cern only one issue and require either a “yes” or “no” vote. The relative complexity of the decisions in initiative and candidate elections is contested but unimportant for the point here, which is merely that findings about cues used helpfully in initiative elections can be extrapolated to the context of candidate elections, even though they operate in a somewhat different information environment.

87. See Francis R. Hill, Probing the Limits of Section 527 to Design a New Campaign Vehicle, TAX NOTES, Jan. 17, 2000, at 387, 388 (discussing the ways political actors used stealth PACs to evade disclosure); see also COMMON CAUSE, UNDER THE RADAR: THE ATTACK OF THE “STEALTH PACS” ON OUR NATION’S ELECTIONS (2000) (discussing section 527 organizations as well as other mechanisms used to avoid regulation), available at http://www.commoncause.org/publications/utr/stealth.pdf.


89. See Press Release, Ballot Initiative Strategy Center, Despite Federal Campaign Finance Reform Ballot Measure Donors Remain Elusive (July 18, 2002) available at
casionally, these tactics are discovered, but we suspect many arrangements escape publicity because media or opponents do not learn of them before the vote.

These strategies are not limited to issue campaigns, they are also familiar tactics in candidate elections. In the Fall 2002 elections, a group calling itself United Seniors Association funded advertisements in which Art Linkletter endorsed a Medicare prescription drug program advocated by Republicans. The ads were broadcast in areas where they would affect the outcomes of various candidate races. United Seniors received the majority of its funds from the pharmaceutical industry, which chose to spend its money through a conduit organization with a name that sounded as though it was an organization of senior citizens.

Thus, even in a system of relatively widespread disclosure laws, notorious groups are able to use conduits and other veiled political arrangements to successfully circumvent regulation. These organizations would be thrilled to see a move to the system proposed by Ackerman and Ayres because it facilitates their evasive tactics. Because of Ackerman and Ayres's preoccupation with contributions and expenditures as a form of bribery, their proposal intentionally incorporates features that hide important information from candidates and voters. The only information disclosed is the name of the group that is spending money in a campaign, presumably, such groups will pick benign-sounding names that hide the source of funds and resonate emotionally with voters. Although such sham groups must also reveal affiliated candidates and organizations under the Ackerman and Ayres proposal, political operatives are adept at hiding the real source of campaign expenditures behind an impenetrable curtain of complex organizational structures. Complicated schemes are not as necessary under the proposal as they are now because the


90. See Voters Turned Off this Election Year by Negative Political Advertising (National Public Radio, Morning Edition Transcript, Nov. 14, 2002).

91. See DAVID B. MAGLEBY & J. QUIN MONSON, THE LAST HURRAH? SOFT MONEY AND ISSUE ADVOCACY IN THE 2002 CONGRESSIONAL ELECTIONS 1, 13, 21 (2003) (discussing United Seniors and more positive voter reaction to this organization than to drug companies funding it).

92. See ACKERMAN & AYRES, supra note 2, at 192–93 (Citizen Sovereignty Act § 4) (stating the reporting requirements of candidates and political organizations).
ultimate source of the money for the organizations can be hidden, at the donor's option, by the nearly secret donation booth. And, if the money will be used for political communications, rather than express advocacy, then notorious groups can donate unlimited amounts of money to the blind trust of the innocuously named cover organization.

The nearly secret donation booth impairs the voting cue of group support in another way. One way to judge the intensity of any group's support for a candidate is to learn how much money it is contributing to the campaign.\textsuperscript{93} Intensity of support can be signaled in other ways as well, perhaps by providing a rating system for candidates with five stars awarded to a strongly endorsed candidate and one star to a candidate supported only in a lukewarm way. Certainly, some of the ideological groups that hope to influence voter behavior through their support of candidates will work to credibly impart information about the intensity of their support. However, some groups will find it hard to provide trustworthy information in a way voters will discover, and other groups will seek to hide the fact that they are strongly committed to the election of particular candidates. Thus, again, mandatory disclosure of the source and amount of campaign spending can provide this vital voting cue.

Ackerman and Ayres would deny voters this information. Like current law, their contribution limits reduce the informational content of contributions because donors cannot fully demonstrate the intensity of their preferences. However, because the contribution limits are significantly higher than those currently allowed by federal law, the Ackerman and Ayres proposal may actually represent an improvement along this dimension. But, their proposal absolutely forbids disclosure of the amount of money contributed to a candidate or to a political organization's blind trust for expenditures or political communications, so voters can never learn the helpful information about intensity of preferences. The most that can be revealed is that the donor contributed more than $200, and disclosure of even this relatively unhelpful information is optional. Unregulated groups can spend unlimited amounts of money for political communications and reveal the information

\textsuperscript{93} See Jeffrey Milyo, \textit{The Political Economics of Campaign Finance}, 3 INDEP. REV. 537, 542-43 (1999) (discussing how campaign expenditures reflect one way to communicate intensity of preferences).
credibly to voters, but such disclosure is optional. Presumably, notorious groups that fear negative voter reaction to the information will choose to remain in the shadows.

Of course, not all helpful information, even about intensity of support, is eliminated by the Ackerman and Ayres plan. Voters can learn how many vouchers organizations have given to candidates, as well as the aggregate amount of money political organizations have raised through the nearly secret donation booth. Voters can look through the list of donors who ask to be disclosed to get a sense of the sources of organizations' support. However, if groups want to obscure their policy or economic agendas, they can do so by using unrevealing organization names and by encouraging the sources of their funds to stay hidden in the donation booth. Although groups that opt out of the system and raise money outside the nearly secret donation booth can credibly reveal the source of their funds and the intensity of their donors' support measured in dollars, nothing in the proposal mandates aggressive disclosure of the source and amount of this money. Thus, in the end, much of the helpful information that can still be revealed under the Ackerman and Ayres proposal is disclosed only if donors wish to publicize their identities and expenditures.

In a limited way, however, the Ackerman and Ayres proposal improves voter competence by making certain relevant information available in an especially salient way. Information about the ratio of vouchers to money that each candidate receives may serve as the basis for a voting cue that seems to improve voter competence—whether the candidate has extensive grassroots support. Voters may correctly perceive that a candidate who receives a substantial number of smaller donations rather than a few very large donations is pursuing policies that benefit the mass of voters rather than a small number of special interests.94 The Ackerman and Ayres proposal may enhance the strength of this cue by calling the contributions most closely correlated with grassroots support "Patriot dollars," a term presumably chosen to

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frame this proposal in a way that resonates with some voters.\textsuperscript{95} Ackerman and Ayres recognize the informational value of such reporting:

These reports will provide insights into public opinion that will rival those offered by public opinion polls. . . . [Each report] will serve as a feedback loop that shapes and reshapess public opinion over the course of the campaign—precipitating a flood of public commentary, as pundits speculate about the meaning of the ebbs and flows in the candidates' fiscal fortunes, and as PACs and parties launch renewed appeals for additional support.\textsuperscript{96}

The information provided by the ratio figures may be of limited usefulness, however. First, it will be difficult to learn whether the pattern of contributions of money also reflects grassroots support, although that information will be somewhat available if the donors opt for disclosure and the reports reveal numerous contributions at or below the $200 threshold. Second, knowing about grassroots support may not actually enhance the competence of some voters whose interests do not parallel the interests of the majority. Such voters may find more helpful the information that a candidate with many vouchers also has the endorsement of the NRA and the John Birch Society, allowing a more accurate conclusion about the policies the candidate is likely to pursue in office. So the proposal enhances one cue of limited usefulness, while impairing a more helpful heuristic.

Ackerman and Ayres could modify their proposal slightly so that it would offer voters more information relevant to the group-support voting cue without compromising the objectives served by their system of partial anonymity. They could adopt mandatory disclosure provisions for political organizations that are otherwise unregulated by their system because they collect money outside the nearly secret donation booth. Such disclosure of these political communications, which under the Act's definitions cannot be intended to influence an election, although they are likely to contain references to candidates, faces higher constitutional hurdles than disclosure of spending advocating the defeat or victory of a

\textsuperscript{95} The use of this loaded terminology may also turn voters off, thereby impairing the cue for some. See, e.g., Daniel H. Lowenstein, Book Review, 116 HARV. L. REV. (forthcoming 2003) (manuscript at 5, on file with author) (arguing that use of these terms is in bad taste).

\textsuperscript{96} ACKERMAN & AYRES, supra note 2, at 74–75:
candidate or otherwise intended to influence an election. However, current jurisprudence contains hints that such statutes could be found constitutional, particularly if the spending is somehow related to a campaign or an election. For example, in *Buckley v. American Constitutional Law Foundation* ("ACLF"),\(^97\) the Court struck down requirements that people circulating petitions dealing with ballot initiatives wear name badges and that reports filed with the state reveal the names, addresses, and compensation paid to individual circulators.\(^98\) The Court suggested, however, that disclosure of the identity of the proponents of a ballot question and the total amount of money spent for a petition campaign was appropriately aimed at the state's substantial interest in controlling the domination of the initiative process by special interests.\(^99\) It appears from *ACLF* and other cases that the Court is most protective of political speech in the context of face-to-face personal encounters, where disclosure might chill speech if the speaker expects a hostile reaction, and less protective in the context of reports filed with the government and disclosed officially.\(^100\) In her partial dissent in *ACLF*, Justice O'Connor characterized disclosure laws as the "essential cornerstone to effective campaign finance reform."\(^101\) She noted that disclosure of the amounts and sources of campaign contributions and expenditures "assists voters in making intelligent and knowing choices in the election process."\(^102\)

IV. CHANGING THE FOCUS FROM ANONYMITY TO THE EXTENT OF DISCLOSURE

A close reading of the Ackerman and Ayres proposal has revealed that the rhetoric of anonymity is misleading because the

\(^{97}\) 525 U.S. 182 (1999).
\(^{98}\) Id. at 204.
\(^{99}\) Id. at 202–03.
\(^{100}\) See Hasen, supra note 40, at 274–76 (providing this analysis).
\(^{102}\) Id. at 224. Similarly, in dictum in *First National Bank of Boston v. Bellotti*, 435 U.S. 765 (1978), a case striking down prohibitions on corporate expenditures in issue campaigns, the Court noted that "[i]dentification of the source of advertising may be required as a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." Id. at 792 n.32.
VOTING WITH CUES

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donation booth protects some secrets, but not all of them. In my view, Ackerman and Ayres do not correctly calibrate the extent of disclosure, even taking into account the harms they see in fuller disclosure, because they do not fairly consider the benefits to voter competence. The nearly secret donation booth will allow groups and individuals who pursue agendas contrary to the wishes of the electorate to hide their substantial support for candidates who, because of shared ideology, will advocate for programs that benefit the groups. This type of influence is not like bribery in that the contributor is not buying a vote that the candidate would not cast sincerely; rather the contributor is ensuring that a sympathetic candidate will become a powerful lawmaker.103 Little in the Ackerman and Ayres proposal changes the ability of the well-to-do to try to influence politics in this way, although an infusion of public funds will dilute their power. Perhaps voters will be able to discern candidates' ideology through endorsements and whatever information is voluntarily publicized. It seems more likely, however, that many voters will not be able to discover helpful shortcuts, while organized groups will still be able to make political judgments accurately because they have the time and sophistication to develop extensive information.

Before we can be confident in drawing conclusions about information and voter competence, however, we need more data. Most importantly, we need additional data about whether the voting cues I have described actually increase voter competence, undermine it, or leave it unaffected. To answer this question, we must rely on nuanced views of voters and their capabilities. The ability to use particular voting cues will vary according to voter sophistication, education, interest, and attention.104 Completely ignorant voters may not be able to use group affiliation cues competently

103. Lowenstein has referred to these different interest group strategies as "legislative" strategies (the bribery-like corruption Ackerman and Ayres target) and "electoral" strategies. See Daniel Hays Lowenstein, On Campaign Finance Reform: The Root of All Evil is Deeply Rooted, 18 HOFSTRA L. REV. 301, 308 (1989).

104. See SNIDERMAN ET AL., supra note 71, at 176–78 (describing different methods of reasoning used by voters of different educational backgrounds); see also R. MICHAEL ALVAREZ, INFORMATION AND ELECTIONS 156 (1997) (finding voters had varying abilities to use certain information about candidates and issues depending on their sophistication and certainty about candidates' policy positions); Paul S. Herrnson & Kelly D. Patterson, Agenda Setting and Campaign Advertising in Congressional Elections, in CROWDED AIRWAVES 96, 98 (James A. Thurber et al. eds., 2000) (discussing different reactions to campaign advertising of voters with high levels of political awareness and voters who care little for politics).
because they will not have a clear picture of the preferences of the groups. For voters who are not especially civically engaged but who do pay some attention to news relevant to political decisions, the structure of the information that they receive will be important. Information must be provided in a way that increases the chances that they will encounter it during the course of their everyday activities. Most citizens will not seek out information, but they may have the tools to use voting cues based on information that they happen to find in the course of their lives.

Any mandatory disclosure statute should be tailored to provide only the information most necessary for voter competence. The source and amount of small contributions and expenditures are not generally informative to voters, so a disclosure statute should exempt individuals and groups that spend insubstantial amounts in this arena. This exception may be required for the law to pass certain constitutional tests, and it also enhances the effectiveness of the statute. While knowing the identity of small contributors does not improve competence, knowing that there are substantial numbers of small donors may be important information. In the Ackerman and Ayres system, a de minimis exemption will not deny voters information about the grassroots support for political candidates because candidates disclose data about the voucher/money ratio reflected in their contributions and transfers.
It is worth considering a broader exemption for individuals who spend money for political and election-related communication. Arguably, information about spending by individuals is generally less helpful to voters than information about group support. In a few cases, such information meets the conditions for effective voting shortcuts. Some people, such as Gloria Steinem, Ross Perot, or William Bennett, have reputations that allow voters to draw accurate inferences about the ideologies of the candidates they support, and information about their campaign spending may be more credible than cues provided by their public endorsements. It may also be helpful for voters to know that a candidate is supported primarily by the large donations of out-of-state individuals, suggesting that she will be less attentive to local needs. In most cases, however, support by individuals is not an effective heuristic because most well-known people do not have clear reputations for policy positions. For example, what information is conveyed by substantial financial support from Bill Gates? The candidate might support policies that benefit Microsoft specifically and information technology generally, but perhaps Gates's support is a product of the candidate's positions on educational issues. More often than ideological or economic groups, individuals act from a mixture of motives, so the signal their support provides is less informative.

Disclosure about spending by individuals is problematic as well because it may raise distinct constitutional concerns. The recent cases protecting anonymous speech have concerned ordinary people participating in the political process in a relatively unsophisticated way. Some of these people seek anonymity because they fear retaliation for supporting ideas and candidates who are violently disliked by the majority. This concern about hostile reactions to those pursuing unpopular causes is one that courts seek to address. Drawing on NAACP v. Alabama, the Supreme Court in Buckley v. Valeo required that minor political parties be allowed an exemption from disclosure if they presented specific

106. See, e.g., Smith & Herrington, supra note 94, at 191.
107. See Buckley, 424 U.S. at 21.
108. See supra note 105 and accompanying text; see also McIntyre, 514 U.S. at 348 (characterizing the case as concerning “a handbill written by a private citizen who is not known to the recipient”).
evidence of hostility, threats, harassment, and reprisals. A few years later, the Court applied that exemption to the Socialist Workers Party after the Party submitted proof of threatening phone calls, hate mail, destruction of property, police harassment, and shots fired at an office. Thus, at the least, any disclosure statute must allow a method for members of similar groups to avoid publicity of their contributions and spending. But if people must apply to a court or administrative agency for an exemption, the mere fact that they are asking for protection from disclosure signals that they may be affiliated with a despised group or policy. Thus, providing an exemption that is applied on a case-by-case basis may still chill the speech if no person is willing to go through the exemption process. In that case, a more general exemption may be warranted.

The benefits of such a general exemption for individuals must be weighed against the possibilities it raises for circumvention. Those who control notorious groups that do not face violent retaliation if their support is disclosed but that fear a negative voter reaction will use any exemption to send their financial support through individuals. Just as in many contexts of political speech, balancing is required. Drafters of disclosure statutes must compare the danger posed by disclosure of despised viewpoints with the danger of circumvention posed by a broad exemption. The best solution may be to adopt an exemption for small and moderate-sized expenditures by individuals, but still to require disclosure of large amounts of political spending by individuals. Such an exemption would be an expansion of a general de minimis exemption that would apply to groups as well as individuals. In the rare case that an individual who is not covered by the statute's exemptions worries that publicity will subject him to violent and hostile reactions, he (or the group he belongs to) can petition a court for anonymity. Additional study of current methods of circumventing disclosure laws as well as further debate of

110. 424 U.S. at 74.
112. See also Hasen, supra note 40, at 280 (suggesting that such groups should be allowed to make ex parte sealed motions to engage in anonymous speech).
113. Cf. TIMUR KURAN, PRIVATE TRUTHS, PUBLIC LIES: THE SOCIAL CONSEQUENCES OF PREFERENCE FALSIFICATION 96 (1995) (noting that when public opinion is highly concentrated, "[p]eople who request a secret ballot [when the default rule is open voting] are therefore suspected of holding dissenting views. Their demands do reveal new information about their private preferences, thus exposing them to retaliation").
the constitutional and policy issues will help policymakers tailor the exemptions in a disclosure statute.

The Ackerman and Ayres proposal also highlights another design feature of disclosure statutes: the structure of disclosure. Their blind trust reporting system makes information available in an accessible format, especially to political entrepreneurs like the media and challengers who are usually the conduits of information to relatively uninformed voters. Ordinary citizens rely on a system of fire alarms to bring important information to their attention. Thus, the key question in assessing disclosure is whether the source of these alarms—journalists and other political actors—can find the information and understand it. Current federal disclosure systems have come under attack recently because they do not provide centralized access to data required under various disclosure statutes; they do not present the information in an accessible and easily-searchable formats; and they present duplicative information in confusing ways. As disclosure laws become less of an afterthought in the campaign finance system, more emphasis should be placed on the method and structure of disclosure.

Arguably, broader disclosure of voting cues that are more helpful than those currently available may lead to undesirable information cascades. Information cascades, which are not necessarily harmful phenomena, are related to the use of heuristics because they can occur when individuals act on the basis of others' behavior, rather than on their own information and judgment. As the literature on voting cues demonstrates, when individuals take actions that are informative to others they can produce positive externalities. However, at some point, an information cascade may develop as the behavior occurs not because of any private in-

114. See ACKERMAN & AYRES, supra note 2, at 94.
115. See POPKIN, supra note 6, at 48 (illustrating how voters look for fire alarms in the media).
116. See id. at 47–49 (applying concepts of fire alarms and police patrols to voter decisionmaking).
119. Id. at 156.
formation, but only because people are following the herd. The harm of information cascades can be serious, as Eric Talley describes:

In the aggregate, serial decisions to follow the herd may lead to a form of group stagnation, curtailing the learning process not only for the marginal actor, but also for all who succeed her. Groups of actors caught within a cascade are therefore prone to severe lapses in judgment, and one can never be confident that the resulting trajectory of behavior—no matter how stable—reflects a desirable social policy.

Broader disclosure concerning the support of various groups for political candidates can pose the threat of more or deeper information cascades if the availability of this generally reliable voting cue convinces people who work now to develop private information to rely instead on the cue. If fewer people act on the basis of their own judgment and more act because of the signals they observe others sending, then cascades not only develop more quickly, but they may also be stronger. In some cases, publicity of certain information by the government in a centralized location can actually increase the chance of cascades because more people will use this relatively cheap information rather than spending time to research and learn on their own.

Although further study of the phenomenon of information cascades in politics is necessary, disclosure of group support for candidates seems unlikely to significantly increase the number of undesirable cascades and may actually forestall some from occurring. First, most individuals and groups who currently develop private information about candidates are likely to continue to produce such information, even with the easy availability of the voting cue. Groups themselves must be sure of the ideology of candidates they support to ensure that their interests will be

120. See id. at 152.
122. For a related conclusion, see ALVAREZ, supra note 104, at 107–08 (providing data that suggests that voters who rely on the party cue may so heavily rely on this “information filter” that they become “less informed about the policy positions of the candidates”).
123. See Talley, supra note 121, at 89.
124. See Bikchandani et al., supra note 118, at 163 (noting also that sometimes government disclosure can reduce the incidence and severity of cascades because it provides new information that can disrupt herding).
served by policymakers. Some people may reduce the time they spend discussing and reading about politics if they can vote competently solely on the basis of voting cues, but my sense is that most individuals who study politics and candidates do so largely because they enjoy it or think of themselves as civically virtuous citizens.

In addition, group-support voting cues actually introduce relatively substantial information about various interest groups and the intensity of their electoral support into an environment now dominated by one prevalent binary cue (party affiliation). Theorists argue that in some circumstances additional and more varied information is the best way to avoid information cascades.125

In the end, the existence and severity of cascades depends on a number of factors, including the timing of disclosure and the interaction with other phenomena such as reputational cascades.126

More study is required before we can reach conclusions about whether cues actually improve voter competence or work, sometimes unexpectedly, to undermine it.

Not surprisingly, those who focus on voter competence identify the design and implementation of disclosure statutes as significant features of the political environment.127 Precisely because it is not a complete anonymity statute, the Ackerman and Ayres proposal allows scholars to focus on the effects of a particular kind of structure for disclosure. If a state adopted their proposal, we would have the benefit of a limited experiment with this system. A number of states have recently adopted innovative campaign finance laws, including public financing systems and very stringent limits on campaign contributions, through the mechanism of direct democracy that allows voters to bypass self-interested legislators.128

125. See Kuran & Sunstein, supra note 121, at 755.
126. See id. at 761 (discussing the relationship between two types of cascades).
127. See, e.g., Garrett & Gerber, supra note 94, at 91–94; Elisabeth R. Gerber & Arthur Lupia, Voter Competence in Direct Legislative Elections, in CITIZEN COMPETENCE AND DEMOCRATIC INSTITUTIONS 147, 157 (S.L. Elkin & K.E. Soltan eds., 1999); see also PAGE & SHAPIRO, supra note 81, at 382 (stating that understanding how voters form opinions leads to emphasis on improving the informational system).
128. WILLIAM N. ESKRIDGE, JR., PHILIP P. FRICKEY & ELIZABETH GARRETT, CASES AND MATERIALS ON LEGISLATION: STATUTES AND THE CREATION OF PUBLIC POLICY 252–53 (3d ed. 2001); see also John Pippen et al., Election Reform and Direct Democracy: Campaign Finance Regulations in the American States, 30 AM. POL. RES. 559 (2002) (finding that states with direct democracy are more likely to have restrictions on campaign contribu-
V. CONCLUSION

Campaign finance reform, like any reform of political institutions, ought to empower real people to make decisions that reflect their preferences. Targeted and well-designed disclosure statutes are part of that sort of pragmatic reform, but they must be drafted with a realistic vision of voters. Ackerman and Ayres construct their proposal with such a view of voters, but then they advocate a structure that allows groups to hide their political expenditures. Groups that fear voter backlash if their support of candidates is known will take advantage of the nearly secret donation booth to make sure that voters will not come to the voting booth armed with information that could help them vote competently. Not all groups will resort to subterfuge to hide their support from the electorate, but voter competence should not depend on the voluntary actions of active participants in the political process. Instead, the substantial systemic interest of enhancing voter competence justifies widespread and mandatory disclosure statutes, targeted to provide the sort of information that voters can use effectively.

Despite its flaws, the innovative design of the Ackerman and Ayres proposal allows us to think about different kinds of voting cues and new ways of making information salient, a genuine contribution by a creative proposal. Daniel Lowenstein has observed that *Voting with Dollars* serves as a “heuristic device, useful as a means of bringing out different features of the campaign finance system and casting light on different reform perspectives.” This observation seems especially appropriate in the context of disclosure. Ackerman and Ayres’s provocative thought experiment—their heuristic—has provided us an opportunity to think more rigorously about the heuristics that voters could use competently and how the government could assist them.

129. See Lowenstein, *supra* note 95 (manuscript at 36).