Disclosure, Credibility, and Speech

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Abstract

Conventional wisdom, embraced by judges and scholars alike, holds that mandatory disclosure chills political speech. That must be right for some actors. Disclosure imposes costs on speech, and that will lead some speakers on the cost-benefit margin to remain silent. However, the conventional wisdom may be wrong at the aggregate level. If you raise the price of a lottery ticket and increase the odds of winning, you might sell more tickets. By the same logic, if disclosure raises the price of speech and also reveals – or induces – better odds of getting a favorable outcome, speakers might engage in more speech. Disclosure might reveal or induce those better odds by uncovering information about politicians' credibility. I explain why and consider legal implications.

INTRODUCTION

When can the government force citizens, corporations, unions, and others to make public their political activities? The constitutionality of campaign finance disclosure laws turns on that question. The answer depends in part on principles: for example, whether the First Amendment prizes speakers' autonomy or aims primarily to foster public deliberation. But most people care about more than principles. Consequences matter too, and legal doctrine reflects this. In assessing whether a given disclosure law violates the Constitution, judges and scholars consider the degree to which the law actually chills speech, stifles corruption, informs voters, and so forth.¹

We do not have a firm grasp on those consequences. That is due in part to a dearth of empirical research; scholars have not systematically

¹ For a recent summary of the jurisprudence of disclosure, see Richard Briffault, Campaign Finance Disclosure 2.0, 9 ELECTION L.J. 273 (2010).
documented the effects of particular disclosure laws in particular settings.\(^2\)

But that is not the only problem. We also have a dearth of theory about those consequences and their role in adjudication.

Many analyses address and make broad assertions about the consequences of disclosure in just a few short paragraphs.

This essay aims to enrich the debate by challenging two standard assumptions about the consequences of disclosure: it chills speech and it reduces corruption. I will also uncover an irony: the same disclosure that helps voters to monitor relationships between wealthy interests and politicians can increase the number of such relationships. All of those claims grow from a common observation, which is that disclosure provides information about politicians' and speakers' credibility. Even in the face of stringent disclosure requirements, that information can lead to a net increase in speech, corrupt speech included. That consequence has implications for the law of disclosure.

I am not writing on a blank slate. In influential work published a decade ago, Professors Bruce Ackerman, Ian Ayres, and Jeremy Bulow advocated laws to mandate donor anonymity.\(^3\) They argued that anonymity would disrupt the market for political influence by making it difficult for politicians to know who supported them and, therefore, who to reward. But if anonymity can deter corruption, then disclosure can facilitate it. If one defines corruption narrowly, then disclosure can facilitate lawful speech as well. Those ideas, the flipside of the Ackerman, Ayres, and Bulow proposal, have not attracted attention. They have not been unpacked, and they have had no impact on the law of disclosure. I hope to draw them out.

To be clear, I am not advocating for a particular disclosure regime; I take no position on the issue. And I am not claiming that disclosure does not chill speech or does increase corruption or does increase influence buying. I am just claiming that disclosure can, in the right circumstances, have some or all of those effects. Because consequences matter in the disclosure debate, scholars, lawyers, and judges should consider that possibility.


I. DISCLOSURE AND CREDIBILITY

Consider a speaker, a speech act, and a purpose linking the two. The speaker could be a citizen, a corporation, a labor union, a political action committee ("PAC"), or anyone else who, or anything else that, can lawfully engage in political speech. The speech act could be a contribution to a politician’s campaign or to a PAC, an expenditure on an ad attacking or supporting a politician, or any similar, lawful speech act. The purpose linking the two could be corrupt: the speaker could seek unlawfully to buy a politician’s vote. Or the speaker’s purpose could be legitimate: it could seek to ensure adequate representation for itself by lawfully supporting a politician.

Conventional wisdom posits that disclosure will chill the speaker’s speech. More precisely, it posits an inverse relationship between the stringency of the disclosure laws and the willingness of the speaker to engage in the speech act. More disclosure generally means more regulations that need to be understood and complied with and more serious penalties for violations. And more disclosure generally means a greater risk of publicity and exposure. For the corrupt speaker, that could lead to criminal penalties. For the legitimate speaker, that could, as recent experience has shown, lead to embarrassment, harassment, boycotts, and demonstrations. All of that discourages the speaker from speaking in the first place.

Scholars and judges disagree about the magnitude of the chilling effect—some believe a particular disclosure law will chill a lot of speech, others think it will chill only a little—but almost no one denies its existence. The chilling effect is the foundation for First Amendment challenges to disclosure.

Now I want to suggest that the chilling effect is only part of the story. The same disclosure that chills speech in some respects may “thaw” it in others. That is because of the information disclosure can provide about politicians’ and speakers’ credibility.

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4 Contributors to Proposition 8, the California initiative banning same-sex marriage, recently faced harassment when personally identifying information from disclosure reports was posted online. See ProtectMarriage.com v. Bowen, 599 F. Supp. 2d 1197 (E.D. Cal. 2009). The Target Corporation recently faced boycotts and demonstrations after a donation to a political group that was interpreted to be anti-gay became public. See Brody Mullins & Ann Zimmerman, Target Discovers Downside to Political Contributions, WALL ST. J., Aug. 7, 2010, at A2.
Before I buy a lottery ticket I consider the likelihood of winning the jackpot, the size of the jackpot, and the cost of the ticket. If the likelihood of winning multiplied by the jackpot exceeds the cost, then buying the ticket is a good investment. Lottery tickets are never a good investment, of course, but political speech might be, and the same calculation is instructive. An actor deciding whether to engage in political speech might consider the likelihood the politician will deliver the vote, the value to the actor of that vote, and the cost of the speech that made it happen.

The chilling effect involves that last variable, the cost of the speech. More disclosure raises that cost, implying that fewer speech acts are good investments and, therefore, fewer speech acts take place. But disclosure can affect the first variable – the likelihood the politician will deliver the vote – as well.

The law forbids a speaker and a politician from making binding commitments to one another. They cannot, for example, sign a contract under which the speaker promises to speak, the politician promises to vote, and both agree to arbitration in case of breach. Instead, a speaker must rely on informal mechanisms to help ensure performance, such as a politician’s credibility. If a politician is credible, then the odds of the politician voting as promised – whether the promise is explicit or tacit – are high, even in the absence of a formal contract. That makes the speech act a better investment. If the politician is not credible, then the odds of the politician voting as promised are low, and speaking will often be a poor investment.

Disclosure can help a speaker assess a politician’s credibility. Speakers can consult a public record, identify contributions, expenditures, and other speech acts that benefitted the politician, and then examine the politician’s subsequent actions. If votes routinely follow speech acts, the politician is credible. If votes rarely follow speech acts, the politician is not.

As more speech acts become subject to disclosure, and as records of speech acts become easier to access, disclosure provides more information about politicians’ credibility. As penalties for violations of disclosure laws rise, the incentive to comply with them strengthens. That should make the records more accurate and, again, more informative with respect to credibility. It helps if more-or-less neutral third parties like the FEC and not politicians themselves publicize the records. If the records become unmanageable, politicians can cut through the clutter by identifying for potential speakers particular speech acts and subsequent votes. If they try to hide broken promises, other politicians who are competing for speakers’ support may rush to expose them.
Sometimes the order of operations is reversed: instead of votes following speech, speech follows votes. A voting opportunity may arise on short notice or early in a politician's term when a supportive speech act is not especially helpful. In such cases, a speaker may request a favorable vote in exchange for a promise to engage in future speech acts on the politician's behalf. That upends the credibility dilemma. Instead of the speaker assessing the politician's credibility, now the politician must assess the speaker's. The more credible the speaker, the more likely the politician is to benefit from voting as the speaker wishes, and vice versa.

Once again disclosure can mitigate the problem. The politician can consult the record and determine whether and to what degree the speaker rewards politicians who support its interests. A history of consistent and valuable speech acts on behalf of faithful politicians implies that the speaker is credible. Occasional and half-hearted speech acts suggest the opposite.

Disclosure is not the only source of information about credibility. Interest groups like the National Rifle Association grade politicians on the basis of their votes and publicize the report cards.\(^5\) That sends a signal about credibility. An "A" rating gives a speaker confidence that acts in support of the politician will translate to pro-gun votes. Speakers who are repeat players - teachers' unions, pharmaceutical companies, defense contractors - develop a sense of politicians' credibility over time. Likewise, politicians and their parties develop a sense of speakers' credibility. Lobbyists, consultants, and other insiders who connect speakers and politicians collect this information. Everyone talks.

This raises an empirical question: to what extent does disclosure provide information about politician and speaker credibility that is not already available in the political marketplace? The more additional information it provides, the more important this line of analysis becomes. I do not know the answer to that question, and I suspect no one else does either. Nor can I imagine offhand how one might find the answer. To complicate matters further, the answer will almost certainly vary by context. The best I can do is offer some speculations and an anecdote.

At state and local levels, disclosure might provide a lot of information about credibility. Many state legislatures are part-time and relatively unprofessional. The Texas legislature meets for fewer than six months

every two years, and New Mexico legislators do not collect salaries for their service. Likewise, many mayoral and city council positions are part-time jobs. Political parties are generally less organized at state and local levels. Speakers and politicians in those environments may lack organization, staff, and institutional memory. Some lobbyists and other insiders who surround state capitals and cities, where there is generally less money at stake, may be less sophisticated than their federal counterparts. Term limits, which are common in the states, may magnify the problem, as legislators frequently move from one position to another. Press coverage may be limited and watchdogs few and far between. In those settings, even a short disclosure record might provide valuable information about credibility.

The picture is quite different at the federal level. Members of Congress work full time and usually serve for many terms. Most are embedded in a major, professional, and relatively disciplined political party. Many powerful interest groups – potential speakers all – have walked the halls of the Capitol and associated federal buildings for decades. Lobbyists and lawyers on K Street are sophisticated. Press coverage is good and watchdogs ubiquitous. For many politicians and speakers in this setting, credibility may be apparent.

Nevertheless, disclosure may still have added value. Members of Congress in their first few years of service might not have established reputations, and even a short disclosure record might provide information on them. That is especially true if those politicians previously served in state legislatures with disclosure requirements. Disclosure might be helpful for new speakers who are not part of the political establishment. Even experts make mistakes, and lobbyists and other insiders might sometimes perceive credibility where it does not exist and vice versa. Finally, disclosure might be especially helpful to politicians, including sophisticated ones. Whereas their actions are often public, speakers'...
actions are, in the absence of disclosure laws, often private. A politician cannot tell if a speaker supported him and him alone (the speaker is credible) or if a speaker supported him and a competing politician to a greater degree (the speaker is not credible, since on balance he made the politician worse off). Disclosure can help.

A recent editorial illustrates this phenomenon. Following his failed bid for the U.S. Senate in 2010, James Huffman wrote that disclosure "serves the interests of incumbents running for re-election by discouraging support for challengers." He claimed that people expressed support for his candidacy but refused to contribute money to him because, in the event his challenge to the incumbent failed, disclosure would reveal who opposed the incumbent—and therefore whom the incumbent should target with unfavorable legislation.

Where Huffman sees a link between disclosure and incumbency I see a link between disclosure and credibility. Disclosure helped the incumbent determine which speakers were trustworthy. Huffman claimed that the incumbent warned some individuals not to support him. If true, those individuals, all potential speakers, might have learned something about the incumbent's credibility as well. Which is all to say that even at the federal level, disclosure can make a difference.

Ackerman, Ayres, and Bulow developed and relied upon many of the ideas in this section. They argued that anonymity would reduce credibility. "Mandating anonymous donations," they wrote, "would make it harder for candidates to sell access or influence because they would never know which donors had paid the price." That statement implies, and those

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9 Cf. John Ferejohn, It's Not Just Talk, 85 VA. L. REV. 1725, 1732 (1999) (arguing that without full disclosure a politician may not know "who else the contributor has given money to--opponents, other people from her own party, independent candidates, third parties, and others--and so she cannot condition her delivery of favors on fine-grained information that a full-disclosure regime would make available").


11 For another example of this phenomenon, see Citizens United v. Federal Election Com'n, 130 S.Ct. 876, 981 (2010) (Thomas, J., concurring in part and dissenting in part) (recounting how "a candidate challenging an incumbent state attorney general reported that some members of the State's business community feared donating to his campaign because they did not want to cross the incumbent . . . ." (citing Kimberley A. Strassel, Challenging Spitzerism at the Polls, WALL ST. J., Aug. 1, 2008, at A11)).

12 Relatedly, disclosure can help politicians determine who has not engaged in speech acts on their behalf, and therefore whom to pressure. See Ayres & Bulow, supra note 3, at 846 ("Mandated anonymity could also deter politicians from extracting donations.").

13 Huffman, supra note 10 ("Sometimes I was told that someone on my opponent's staff had called with a reminder that supporting me was not a good idea.").

14 Ayres & Bulow, supra note 3, at 838.
scholars surely recognized, the converse: disclosure can reveal information about credibility. Because of that prior work, I do not claim much originality just yet. My contribution comes in the next three sections when I build on those ideas.

II. CREDIBILITY AND SPEECH

Suppose that a new, more stringent disclosure regime is implemented, and the resulting records are publicly accessible. Suppose further that those records do, in fact, provide information about politicians’ and speakers’ credibility. What does that mean for speech? There are many possibilities, and all turn on what exactly the disclosure reveals.

To begin, suppose speakers learn that politicians are more credible than previously supposed. Greater credibility means better odds of a politician delivering on his promise, and that increases the expected benefit of a speech act. That should increase the total number of speech acts. However, there is a countervailing force. The new disclosure regime raises the cost of speech, and that should decrease the total number of speech acts. The net effect of disclosure depends on the magnitudes of those effects. If disclosure increases the expected benefit of speech acts by more than it increases the expected cost, it will increase total speech, and vice versa.

Now suppose speakers learn that politicians are just as credible, or less credible, than they had thought. That means the expected benefit of speech has, in the wake of the new disclosure regime, stayed the same or even declined, and the cost of speech has gone up. In that circumstance, disclosure will decrease total speech.

Politicians can consult the record too, and they may learn something about speakers’ credibility. If speakers are more credible than they had thought, then the expected benefit of acting on behalf of a speaker rises. That should increase the frequency with which politicians do what speakers want. But again, there is a countervailing force. Just as disclosure raises the cost of speaking, it can raise the cost of complying with a speaker’s wishes. Disclosure can expose a politician’s support for a speaker, and that can lead to public ridicule, scorn from constituents, or even criminal penalties. The net effect of disclosure on politicians’ promise-keeping depends on the magnitudes of those factors. If disclosure increases the expected benefit of promise-keeping by more than it increases the expected cost, politicians will keep more promises, and vice versa. If disclosure shows that speakers are equally or less credible than
politicians had thought, then disclosure decreases the benefit and raises the
cost of acting on behalf of a speaker, and promise-keeping should decline.

So far I have considered the incentive effects of disclosure on speakers
and politicians in isolation. That helped clarify concepts, but it presents an
unrealistic picture. A more realistic, if murkier, picture appears when
incentive effects are combined and speakers and politicians can react to
one another.

Suppose speakers learn that politicians are more credible than they had
thought. If the costs of disclosure are sufficiently low, speakers will engage
in more speech. When the supply of widgets increases, the price of widgets
typically falls, and I surmise the same principle applies here. An increase
in the supply of speech will lower the price politicians are willing to pay
for the average speech act. Intuitively, if there is lots of speech to go
around, politicians’ need for any particular speech act should decline.
Politicians can pay less for speech by offering less-valuable votes. Or they
can pay less by breaking more promises: agreeing to vote for X with 50
percent certainty costs a politician less than agreeing to vote for X with
100 percent certainty. When those broken promises are disclosed,
politicians’ credibility will decline. Speakers will engage in fewer speech
acts, which means the price of speech will rise, which might induce
politicians to keep more promises, which will increase their credibility, and
the cycle continues.

Similar possibilities arise if the analysis begins with politicians.
Suppose politicians learn that speakers are more credible than they had
thought. If the costs of promise-keeping are sufficiently low, politicians
will keep more promises, since the record shows those promises yield fruit.
An increase in the supply of kept-promises ought to drive down the price.
Intuitively, if credible promises are easy to come by, speakers will not pay
as much for any particular promise. Speakers can pay less by engaging in
less-valuable speech acts — or by breaking more promises to politicians.
That should drive down speakers’ credibility, which should lead politicians
to keep fewer promises, which should increase the value of promise-
keeping, which might induce speakers to become more credible, and so on.

There are still more complications. Disclosure might make speakers and
politicians choosier. Recognizing that disclosure will reveal their
credibility, and given that a reputation for being credible has value,
speakers and politicians may limit themselves to promises they intend to
keep. The effect of that is unclear. Speakers might target fewer politicians
than before but spend more money on each one, leading to a net increase in
speech. Politicians might engage with fewer speakers but more often keep their word, leading to a net increase in promise-keeping.

Finally, speakers and politicians are not monoliths. The Target Corporation sells products to liberals and conservatives alike. It could lose a lot of business if disclosure revealed political speech that systematically favored Democrats or Republicans. In contrast, the NRA can support Republicans without enraging a substantial fraction of its members. Some small donors, meaning individuals who spend hundreds rather than tens of thousands of dollars on political speech, may be deterred by disclosure. They may prefer to remain anonymous, and they may realize their marginal contributions would not affect much anyway. But other small donors may have strong ideological commitments or may welcome the exposure, either for personal or professional reasons. Disclosure either would not affect their political speech or would increase it. Politicians with safe seats may keep more, or fewer, promises than politicians facing difficult elections. And so forth.

I cannot say in the abstract, let alone in practice, how these moving parts come together. Game theory can help untangle strategic interactions like the ones I have described, and perhaps in the future I or someone else will apply it to this topic. For now I have to settle for a confident prediction: there is at least one plausible equilibrium in which disclosure increases speech.

III. CLARIFICATIONS, DISTINCTIONS, AND A CRITIQUE

So far I have discussed speech acts in mercenary terms, treating them as currency to be exchanged for votes. I have done so to illuminate relationships between speakers and politicians, not to pass judgment on them. The line between an improper quid pro quo and proper support for a politician who represents one’s interests is blurry. Whether a particular speech act is the former or the latter turns on the mental states of the speaker and politician – typically unobservable – and one’s philosophical approach to democracy.

Those ideas are important but, for my purposes, largely irrelevant. I can simply borrow language from the beginning of the essay and assume that there are both corrupt and legitimate speech acts. Corrupt speech acts are those that courts deem to be corrupt and, therefore, unlawful. All other speech acts are legitimate.

My analysis may apply most clearly to corrupt speech acts that are part of a quid pro quo, but it could affect legitimate speech as well. Suppose an individual wants to back a pro-environment politician. There is no corruption; he simply wants to identify and lawfully support a committed environmentalist. Disclosure could provide that individual with valuable information. A politician who increasingly receives support from coal companies might, despite a strong voting record on environmental issues, be less credible than another politician with a similar voting record who does not receive such support. Disclosure may indicate that the latter politician does not accept coal company money or that coal companies perceive that politician’s environmental commitments to be unshakeable. Information like that could increase political speech.

I want to introduce one more term, “nefarious speech.” By nefarious speech I mean all speech acts that are corrupt, and therefore unlawful, as well as speech acts that are lawful but problematic for Ackerman, Ayres, and Bulow because they give wealthy interests disproportionate influence in the legislative process.17

Now I can distinguish my analysis from that of Ackerman, Ayres, and Bulow. Unlike me, they did not argue that disclosure could increase speech. Instead, they argued that disclosure does not deter as much nefarious speech as anonymity would.18 That position is plausible. If disclosure imposes sufficiently high costs on speech, and if anonymity makes credibility assessments sufficiently difficult, then both approaches could decrease nefarious speech, with the latter deterring more than the former. But that does not exhaust the possibilities. Disclosure could also increase

17 See Ayres & Bulow, supra note 3, at 844-52 (proposing anonymity as a solution to “quid pro quo corruption,” “monetary influence,” and “inequality”). To complicate matters, they refer to all speech that produces those problems as “corrupt” speech.

18 See ACKERMAN & AYRES, supra note 3, at 27 (“[M]andated disclosure . . . does little to insulate the political sphere from the corrupting influence of unequal wealth.”); Ayres & Bulow, supra note 3, at 844 (“In sum, public disclosure produces very little deterrent benefit . . . .”); id. at 885 (“Even though the Supreme Court suggested that mandated disclosure could deter corruption, it has proved exceedingly difficult to prove . . . . [D]onor anonymity is more likely to deter corruption . . . .”); cf. Briffault, supra note 1, at 295 (“Ackerman and Ayres were concerned with the undue influence that large donors can obtain with elected officials but argued that anonymity would do a better job addressing the problem of quid pro quo corruption than disclosure.”).
speech, nefarious speech included. As I explain in the next section, that matters for the law of disclosure.

Before turning to that issue I offer a critique. Ackerman, Ayres, and Bulow argued for anonymity on the ground that it would make credibility determinations difficult and therefore reduce nefarious speech. Their first conclusion seems right, but the second does not necessarily follow.

Both credibility and disclosure costs affect speakers’ and politicians’ incentives. Anonymity clouds credibility, but it also lowers disclosure costs. So while credibility assessments may be difficult under an anonymity regime, speakers and politicians may still cut, or try to cut, deals because the risks are minimal: there is no disclosure to expose them. Some speakers and politicians may prefer to make risky bets that will not be exposed (anonymity regime) than to make safe bets that might be exposed (disclosure regime). That means anonymity can facilitate the nefarious and corrupt speech it means to deter. And that means the desirability of anonymity depends on assumptions — unverified, as far as I know, and presumably context-specific — about speakers, politicians, and their strategies.

IV. SPEECH AND THE LAW OF DISCLOSURE

Suppose disclosure does — or at least can — increase speech. What does that mean for law?

First and foremost, it places constitutional challenges to disclosure laws on shakier ground. The mere existence of a disclosure requirement does not imply, for a particular plaintiff or for all speakers, that speech has been chilled. To fully support such a claim, a plaintiff would have to show that disclosure imposes costs on speech and that it does not produce offsetting speech benefits by revealing or enhancing credibility. Presumably corrupt speech acts would not be considered in the calculation, so I can be more precise. To fully support a claim, a plaintiff would have to show that disclosure imposes costs on legitimate speech and does not, by revealing or enhancing credibility, facilitate enough legitimate speech to offset those costs.

It would be difficult for a plaintiff to show this. Courts probably will not, and perhaps should not, demand so much. Nevertheless, there is value in describing what a complete constitutional claim would look like. I suspect that no disclosure claim, successful ones included, has ever looked that way.

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In addition to the First Amendment claims, this analysis has implications for the interests raised in defense of disclosure laws. I begin with the information interest. If a law requires disclosure of political speech, and if the law is challenged in court, the government will often defend the law on the ground that it provides valuable information to voters.\(^{19}\) Knowing who is responsible for speech, the argument goes, can help people assess its truthfulness and make better choices when voting. The information interest has become very important over time. It is now the only interest that the government can use to justify mandatory disclosure of independent political expenditures, including large independent expenditures by corporations, unions, and "Super PACs."\(^{20}\)

Disclosure probably does provide voters with additional information. But if disclosure chills speech, then it also deprives voters of some information—the information contained in the chilled speech acts. Thus disclosure may, or may not, provide voters with more information overall. And thus the government’s information interest, while defensible, is not unassailable.

If the analysis in this paper is correct and disclosure can increase speech, then the government’s information interest becomes stronger. Disclosure can make speech acts more informative and increase the number of speech acts, so voters may gain information in two ways and lose it in none. Note, however, the irony in this. The same disclosure laws, sustained by the information interest, that help voters understand lines of influence between speakers and politicians can increase the number of lines of influence.

I conclude by considering a second government interest used to justify disclosure: the anti-corruption interest. If the law requires disclosure of contributions, either to a candidate or to an organization that contributes to candidates, and if the law is challenged in court, the government will typically defend the law on the ground that it combats corruption.\(^{21}\) Under the standard assumption that disclosure chills speech, that defense makes sense. Essentially, the government argues that disclosure chills legitimate speech, but it chills corrupt speech too, and the benefits of chilling the latter outweigh the costs of chilling the former.

If the standard assumption is wrong and disclosure can increase speech, then the government’s anti-corruption defense becomes much weaker. The reason is straightforward: if disclosure can increase speech, corrupt speech

\(^{19}\) For a summary, see Briffault, supra note 1, at 280-82.

\(^{20}\) See id. at 281-82, 284-85.

included, the government cannot reflexively claim that disclosure combats corruption. Instead, the government must make a more nuanced claim. It must argue that although disclosure might chill or thaw legitimate speech, and although it might chill or thaw corrupt speech, in the circumstance at hand it chills corrupt speech and chills enough of it to be, on balance, good policy. Convincing evidence of that will be hard to come by.

**CONCLUSION**

If consequences get any weight in the constitutional calculus of disclosure, then they can be determinative. In a particular case, powerful consequences can outweigh even strongly felt principles. We do not, in my view, have a firm grasp on those consequences. We rely on near-universal assertions – disclosure chills speech, disclosure combats corruption – rather than careful, contextual theories. I do not think the inability to test theories, to determine empirically the relationship between a challenged disclosure law and political speech, undermines my point. On the contrary, I think the difficulties of empirical study make the need for rich and complete theorizing more pressing.

I have tried to make progress on these matters by challenging the status quo. I have suggested that disclosure can actually increase speech, both corrupt and legitimate, by providing information about politicians' and speakers' credibility. One short essay cannot develop or defend that possibility and its implications in full, but perhaps it can start a conversation.