The Substantial Restraint Doctrine: A New Judiciary Standard of Analysis for Campaign Finance Disclosure

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Abstract

American elections are defined by the millions of campaign finance dollars contributed to individual candidates and campaigns by 501(c)(4) nonprofit groups seeking to push forth their interests' competing agendas. While many criticize the volume of these donations, others seek to address the fact that 501(c)(4) nonprofits are using "dark money" vehicles enabled and enforced by Supreme Court precedent. While political donors may face First Amendment protections for their financial expressions, there is a strong public interest in voters being informed of such contributions. However, as NAACP v. Alabama contends, the implied right of privacy is critical in cases where political donation may yield harm or reprisal. This analysis details and expands upon a Supreme Court doctrine of substantial restraint, ensuring campaign finance reform with all these challenges in mind. As I derive through my research, a stare decisis precedent of substantial restraint would slow the proliferation of dark money on a case-by-case basis while allowing factions to continue to play in the game of political expression through campaign finance.

In the US political landscape today, political success can be bought. Due to precedent set by various Supreme Court cases, the political donation dollar is considered symbolic of free speech, a protected right by the First Amendment to the US Constitution for both individuals and corporations. While there is great interest in maintaining this critical right, elements of the campaign cycle — for example, the Republican primary in the 2016 presidential election — have grown debatably undemocratic. In the aforementioned case, prospective Republican candidates sought out the "dark money" financial support of political mega-donors Charles and David Koch so prominently that the primary was dubbed the "Koch primary."[1] Political donation dollars in gargantuan quantities are vital to building any state or federal candidate's war chest; in a 2020 presidential election in which former President Donald J. Trump lost, campaign manager Brad Parscale predicted that the Trump campaign would be "a billion-dollar operation, minimum."[2] The sheer magnitude of money in politics is currently out of Federal Election Commission and Internal Revenue Service control — process reform is necessary to wrangle in political donations. "Pay-to-play politics" may be here to stay due to the private interest in protecting the right to free speech; that being said, there is a strong public interest in knowledge of where political donation dollars are going, information which does not universally exist due to an ability to encrypt dark money under current FEC standards.[3] While the process of campaign finance disclosure is, as proven by Supreme Court precedent, complicated, it is possible to enforce in the courts. What is necessary to inform the American public and dissuade acceptance of massive political donations is a disclosure precedent balancing the private right to free speech versus the public dividend of transparency — a compromise to repair "largely ineffective"

[1] Schatzinger and Martin, *Game Changers,* 89.
[2] Ibid., 9.
[3] Ibid., 75.

federal campaign finance laws, place the onus on the US court system and allow for the expression of "policy preferences fairly and effectively."[4]

Dark money, in essence any outside nonprofit campaign contribution that does not legally require full disclosure of the donor base, has embedded itself within American politics. These expenditures skirt FEC disclosure via various methodologies as determined per federal and state law — on the federal side of bureaucracy, a common avenue is through earmarking loopholes. Federal election law states that "each person who made a contribution in excess of $200 ... for the purpose of furthering an independent expenditure" must be disclosed to the FEC as a political donor.[5] Furthermore, on all electioneering communications over radio, television, and other media sources, "donation[s]... made for the purpose of furthering electioneering communications" summing to $10,000 or more must disclose all donors who granted $1,000 or more.[6] While these legalities intend to dissuade massive campaign contributions, dark money donor groups have cited the "furthering" language in both codifications to cover donations into a group's general fund. In addition to the earmarking loophole surrounding a group's independent expenditures, the FEC's precedent regarding express advocacy purposefully dismisses clearly political language; express advocacy as it pertains to independent expenditure is "relevant to the FEC only if it uses particular phrases such as 'vote for,'" slighting disclosure requirements once again.[7] The legislative contribution limits around nonprofit donors concerning their tax-exemption status have been historically dodged by these legal subtleties, enabling such groups to increase in scale and notoriety. The landscape of campaign finance is dominated by

[4] Cigler and Loomis, *Interest Group Politics,* 182-183.
[5] Waitzman, *Free Ride on the Freedom Ride,* 120.
[6] Ibid.,.
[7] Dimmery and Peterson, *Shining the Light on Dark Money,* 54.

nonprofit institutions that raised, over a decade ago in 2012 and more since, " at least $313 million … across all federal elections" that year.[8]

Money in American politics is no new trend — in the era of corrupt party machines like that of Tammany Hall in New York City, those "who would carry the water for the big corporate backers" were nominated and funded by party and outside interests.[9] Post-Watergate, campaign finance was at the top of the agenda once again as amendments to the Federal Election Campaign Act, or FECA, sought to suppress tremendous political donations from individuals. However, these moves led to the dawn of the political action committee, or PAC, which held "limits five times greater than those placed on individuals."[10] These entities allowed for augmented special interest influence in elections through their "soft" money donations — an influence so out of control that the 1999-2000 election cycle saw a total of "$495.1 million [raised] in soft money," with Republicans and Democrats both spending over $240 million each.[11] This gradual happenstance spurred the development, authorization, and passage of the Mccain-Feingold, better known as the Bipartisan Campaign Reform Act (BCRA). BCRA entailed a "control [of] the flow of soft money and the increasing influence of issue ads" — nonetheless, as history repeats itself, interests once again found an institutional loophole in the section 527 group.[12] Using express advocacy and "magic word" loopholes, 527s cited past precedent to circumvent FECA, BCRA, and disclosure requirements; today, 527s, per federal election statutes, must register with the IRS and face stringent disclosure requirements. The 527 has since been replaced by the 501(c)(4) group as the preferred vehicle of dark money financing — more infamously renowned as the super PAC.

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[8] Oklobdzija, *Public Positions, Private Giving,* 2.
[9] Cigler and Loomis, *Interest Group Politics,* 213.
[10] Ibid., 214.
[11] Ibid., 215.
[12] Miller, *Parting the Dark Money Sea,* 350.

The super PAC is the progeny of three Supreme Court *stare decisis* principles that have served to weaken federal and state election codes in the name of first amendment protections. At the nascent stages of PAC influence in 1976, *Buckley v. Valeo* sought to uphold the "integrity of our system of representative democracy" by upholding restrictions on individual donations to candidates and campaigns but overruling limitations on total campaign expenditures as unconstitutional in the spirit of free speech.[13] Not only did this decision set the initial precedent that a campaign dollar donated was symbolic of one's free expression, but also it provided that no limitation on total contributions existed in the collective, thus enabling PACs to operationalize further. Secondly, *FEC v. Wisconsin Right to Life* in 2007 ruled that BCRA limitations on political advertising were unconstitutional; issue advocacy advertising did not fall under express advocacy and, therefore, was not subject to the scope of BCRA. It was deemed that BCRA applied "only if the ad [was] susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate."[14] This precedent enabled creativity regarding independent expenditure reporting of political versus apolitical speech. Finally, the most salient impetus for the proliferation of super PACs lies in the 2010 *Citizens United v. FEC* decision. The Court outlined that corporations are their own entities that can engage in First Amendment-protected political speech through donations from their general treasury funds — a controversial stance backed by the notion that "political speech must prevail against laws that would suppress it, whether by design or inadvertence."[15] Section 501(c)(4) groups face no disclosure requirements, hold anonymous influence, and serve as the preferred tool for political donations in part to these three standards. In the 2006 election cycle, dark money benefactors

[13] *Buckley v. Valeo*, 424 U.S. 1 (1976).
[14] *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 551 U.S. 449 (2007).
[15] *Citizens United v. Federal Election Commission*, 558 U.S. 310 (2010).

spent $5.17 million — calculated totals reveal that this spending "has exceeded $2 billion since" that year.[16]

This volume of undisclosed money raises severe concerns about the transparency of candidates and campaigns and what they are truly supporting. A 2019 study found that candidates and campaigns seek anonymity in their financial affairs because there exists strong "social pressures motivation behind concealing one's donation"; a conservative candidate can accept donations from liberal causes, and vice versa, in the current game.[17] The clandestine nature of campaign finance serves against the public interest, fostering inequity against smaller interest groups and undermining the intentions of state and federal election laws. On the contrary, interests allow for "the influence of factious leaders [to] kindle a flame within their particular States," as Founding Father James Madison posits in *The Federalist, Paper Number 10.*[18] Interest-based factions are testaments of democracy and First Amendment expression — an argument supported and extended by *Buckley v. Valeo* and *Citizens United v. FEC.* Interest groups and their voices, pecuniary or non-pecuniary, are vital to the function of American democracy. Economist John Kenneth Gailbraith described interest groups in the 1950s as constantly vying for "countervailing power" to set the agenda, often working as the informers, authors, and financiers of policy decisions.[19] To take away the power of the interest group dollar in drafting, organizing, and implementing policy through the avenue of electing candidates is to effectively strip these groups of their First Amendment-protected speech, no matter if the group in question is the well-established National Rifle Association or a newly founded grassroots environmental justice coalition. That being said, American interest group politics does not

[16] Schatzinger and Martin, *Game Changers,* 21.
[17] Oklobdzija, *Public Positions, Private Giving,* 1.
[18] Madison, *The Federalist, Paper Number 10*.
[19] Andres, *Lobbying Reconsidered,* 212.

"operate as a perfectly competitive pluralist matter" — this public insufficiency among interests is not aided by the lack of transparency that characterizes post-*Citizens United* dark money 501(c)(4)s.[20]

Limiting the volume of campaign financial donations is a slippery slope due to the implications regarding freedom of political expression. Some reformists have called for the public funding of elections via state tax dollars; however, public funding programs have historically disabled candidates and campaigns from operating to their total capacity. A failed Arizona gubernatorial public funding program only allotted $1.1 million to each candidate who opted into its usage. In fact, current Arizona governor Doug Ducey "turned down the money and raised… $2.4 million for his 2014 campaign."[21] The past ineptitude of these programs does not even consider the infringement on the pluralism that Madison recalled as vital to American democracy. Following First Amendment standards, the US government regulates not the content of speech but rather its context — what can and should be targeted by campaign finance progressives is the disclosure of dark money donations. Federal and state disclosure legalities and stringent bureaucratic enforcement by the FEC and IRS might allow the American voter to have "information as a basis for making an [informed] election decision."[22] This addition for voters would not inhibit interest groups from duly having their say in top-of-the-agenda policy issues, nor would it neglect the public interest of political transparency. Disclosure rectification, in a pragmatic sense, could shrink partisanship by encouraging candidates to become more centric to "stick to their guns" from a policy perspective; that being said, as evidenced by the aforementioned 2019 study, 501(c)(4) dark money donors who "simultaneously feared backlash against their businesses or their reputation" in the short-run may maintain the status quo in a new

[20] Andres, *Lobbying Reconsidered,* 6.
[21] Schatzinger and Martin, *Game Changers,* 169.
[22] Ibid., 174.

game of disclosure, furthering partisanship in the long-run.[23] Since the effect of such a dynamic on partisanship is underdetermined, disclosure laws appear to bring an ideal compromise as opposed to a full quota on campaign finance dollars from a realistic policy perspective.

However, complete transparency in the scope of campaign finance can also foster contention regarding the context of the free speech being displayed. While the public interest in information on candidates and campaigns is compelling, there is a significant interest in the privacy of one's speech, especially in cases where there is a reasonably imminent threat to the party in question. From the perspective of dark money-donating 501(c)(4)s, contemporary disclosure laws pose an "unconstitutional restraint" on the historically-implied right to privacy.[24] The Americans For Prosperity Foundation, the Koch brothers' primary super PAC, has successfully defended itself and fellow dark money donors with this argument — AFP cited that they had experienced an attempted "cyberattack, received a bomb threat, and discovered a fire bomb outside one of its field offices" directly as a result of disclosure of their political affiliations.[25] Reasonable probability for threat, harassment, or reprisal in reaction to a measure of free speech has been held in various cases by the Supreme Court as a standard for the obfuscation of campaign finance; interestingly enough, this *stare decisis* precedent roots from *NAACP v. Alabama,* a 1958 civil rights case on the disclosure of NAACP membership lists to the state of Alabama to suppress NAACP business within the state.

NAACP v. Alabama postulated that such disclosure would violate the "advancement of beliefs and ideas" central to Fourteenth Amendment Due Process — in layman's terms, such disclosure of organizational membership would inherently threaten members of the NAACP and

[23] Oklobdzija, *Public Positions, Private Giving,* 6.
[24] Waitzman, *Free Ride on the Freedom Ride,* 118.
[25] Schatzinger and Martin, *Game Changers,* 134.

subject them to a reasonable probability of threat, harassment, or reprisal.[26] There are inherent issues in taking the argument of *NAACP v. Alabama* outside of civil rights and applying it to privacy protections for 501(c)(4) nonprofit donors. Nonetheless, the Roberts Supreme Court has repeatedly applied the motivations of *NAACP v. Alabama* in this context. Two cases pertaining to AFP provide the criteria for this interpretation. *Americans for Prosperity v. Becerra* was a 2018 case related to donor privacy for 501(c)(3) organizations. Essentially, AFP sued the California Attorney General for enforcement of Form 990, an IRS-required donor disclosure form. The US Court of Appeals for the Ninth Circuit found that the Form 990 requirement did not violate implied First Amendment speech rights since it disclosed nonpublic information to the IRS and made it easier for the State of California to "police misconduct by charities."[27] However, this set an antithetical precedent coupled with *NAACP v. Alabama* that public disclosure may be contrary to First Amendment rights. Secondly, *Americans for Prosperity Found. v. Grewal* was a 2019 case that essentially forced a "permanent injunction" against a State of New Jersey dark money regulation that required comprehensive donor disclosure.[28] Essentially, this case reaffirmed that issue advocacy communications are not considered electioneering communications per *FEC v. Wisconsin Right to Life* and that "lobbying is not compensable."[29] This ruling was a win for New Jersey and national super PACs — more lax disclosure laws allow for increased independent expenditures under the veil of implied privacy protections.

The standard set by *NAACP v. Alabama* in cases about political disclosure may hold strong negative connotations with its controversial applications. However, it does advocate for more lenient disclosure regulation with some positive externalities. The way *NAACP v. Alabama*

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[26] *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).
[27] *Americans for Prosperity Foundation v. Becerra,* 919 F. 3d 1177 (2019).
[28] *Americans for Prosperity Foundation v. Grewal et al*, No. 3:2019cv14228 - Document 39 (2019).
[29] Ibid.,.

has been cited in the *Becerra* and *Grewal* cases echoes the sentiments of Justice Clarence Thomas' and Justice Samuel Alito's strict scrutiny opinions — "the least restrictive means" of disclosure is the policy option that offers the greatest protection of democratic interests and leverage.[30] This permissiveness within the court system to campaign finance activity centers on a historical association between political expression and privacy of thought; however, this is at the expense of public informational interest. That being said, antithetical perspectives such as Justice Antonin Scalia's exacting scrutiny, "no-anonymity standard" provide for the opposite — they heavily restrain the rights of the actors within the system to maximize utility for the public.[31] Again, interests fall in an uneven balance with this disclosure solution as with that of Thomas and Alito. The "private heckler's veto" and ultimatum of violent action are all that is needed to dissuade minority interests from investing their thoughts, resources, and opinions into the issues that they stand for.[32] With campaign finance reform, Goldilocks equilibrium must be fostered and sustained between public and private interests; any reform too drastic in either direction neglects the policy exemption circumstances on either side of the financial disclosure issue.

State and federal legislatures and bureaucracies have invariably justified no universal answer to the question of financial disclosure versus interest privacy. As elections fall under the Tenth Amendment's reservation of power to the states, a spectrum of policy exists regarding who or what is disclosed to state election commissions. In a state like Montana, the Ninth Circuit Court of Appeals has "thus far… upheld" disclosure laws against claims of "scattershot" breaches of the First Amendment.[33] That being said, *Grewal* found that the 2021 State of New Jersey disclosure guidelines featured a "broad inclusiveness" of donors misaligned with the

[30] Waitzman, *Free Ride on the Freedom Ride,* 137.
[31] Ibid., 143.
[32] Ibid.,.
[33] Schatzinger and Martin, *Game Changers,* 195.

severity of the public interest in campaign finance details.[34] State legislatures have experienced varying success in implementing campaign finance reform laws; on the federal level, policy enactment and enforcement in this department have yet to garner consistent success. The FEC, to this point, has failed to close the earmarking loophole for independent expenditures due to a "very narrow reading of the [BCRA] statute."[35] The IRS, too, has struggled bureaucratically to combat the Daisy Chain effect, or the clouding of original donors as campaign dollars are transferred from entity to entity, by "requir[ing] the reporting organization — the last in the chain — to disclose donation history so that the money is traceable to the original source."[36] While legislative propositions such as the DISCLOSE Act of 2021 have surfaced to shed light on the political activities of specifically corporate super PACs, the hypothetical passage of these federal statutes will be moot with the current disconnect of the FEC and IRS in enforcing such mantras.

The power to hold dark money interests accountable for their political donations lies within the judicial arena and the precedents that it sets. Attorney Emma Waitzman proposes a four-step test centered on the doctrine of "substantial restraint" exhibited in *NAACP v. Alabama* — essentially, her proposal combines the spirit of transparency and privacy into a situational context that determines whether or not donors must report their political activity.[37] According to Waitzman, exemption from disclosure is possible if a high number of people are subject to disclosure, the government perpetuates or deliberately fails to prevent any harm caused by disclosure, harm is recent, frequent, or severe, and the party in question is "a minor party or espouses dissident beliefs."[38] Waitzman's test effectively sets guidelines for the court system on handling cases of disclosure situationally; furthermore, the Supreme Court adopted such a

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[34] *Americans for Prosperity Foundation v. Grewal et al*, No. 3:2019cv14228 - Document 39 (2019).
[35] Miller, *Parting the Dark Money Sea,* 376.
[36] Ibid., 377.
[37] Waitzman, *Free Ride on the Freedom Ride,* 144.
[38] Ibid.,.

nonpartisan precedent, *stare decisis* would create a binding decision for all state and federal courts because of First Amendment considerations and interpretations. Implementing the substantial restraint test in the US court system would perhaps be more realistic and effective in combating the disclosure issue than legislative action or complete bureaucratic reform of "enormously dysfunctional" agencies.[39]

The first factor of the substantial restraint test refers to the number and prominence of individuals under question as dark money donors. The nature of the doctrine protects against low-volume donors in high numbers; such disclosure information is "trivial as compared to the identification of top contributors and key drivers behind political messages."[40] In applying this factor, Charles and David Koch and other Super PAC leads would be subject to donor disclosure since they fall under the condition of being the wealthy and the few. Furthermore, organizations such as the Susan Thompson Buffett Foundation, which has been "primarily funded by investor Warren Buffett" and "has contributed $26 million to the Planned Parenthood Action Fund," would likely have members subject to disclosure due to the sheer magnitude of political donation from megadonors like Buffett himself.[41] By this precedent, the growing field of low-volume political donors is protected — for example, the typical gun-supporting member of the National Rifle Association — while the public attains informational value about the highest volumes and statuses of individual political donations.

Secondly, the substantial restraint test protects against disclosure of individual donors in cases where the government is inciting, perpetuating, or exacerbating harm towards the parties at hand. This condition was the heart of the *NAACP v. Alabama* decision, as it was deemed a "crucial factor [of] the interplay of governmental and private action," thus protecting the

[39] Schatzinger and Martin, *Game Changers,* 178.
[40] Waitzman, *Free Ride on the Freedom Ride,* 146.
[41] Schatzinger and Martin, *Game Changers,* 60.

NAACP from having to disclose its membership lists.[42] The *Becerra* precedent is also relevant to this factor — part of Americans for Prosperity's argument against Form 990 was that mishandling such a form could lead to "slight… risk of inadvertent public disclosure."[43] With a substantial restraint test implemented, one could expect disclosure protections to be upheld for historically underrepresented or discriminated-against groups; institutional fallacies and inequities might become the source of argument for situational disclosure. All else aside, the substantial restraint test posed by Waitzman does factor in governmental systemic issues as a determinant in whether a donation may or may not need to be disclosed to the public.

Thirdly, Waitzman accounts for the "numerosity, recency, and severity" of the infractions and injuries committed against the parties.[44] This factor of the substantial restraint test lacks clarity in its standard; measurement requirements would be necessary, which may fall to interpretation by the courts on a case-by-case basis. Past precedents have eluded that high-frequency death or bomb threats fulfill this condition against disclosure. However, it is essential to note that economic harm has limitations when the nature of this test has been leveraged in the courts; the *Becerra* case found that the Court must only contemplate "economic reprisal that has the effect of suppressing public discourse, such as employer blacklists."[45] A boycott, for instance, is not evidence enough to call economic injury severe. In evaluating Waitzman's definition of her third term, there is much gray area in its interpretation; situationally, the court system must evaluate whether injuries to parties are severe, numerous, or salient enough to justify an exemption from disclosure.

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[42] Waitzman, *Free Ride on the Freedom Ride,* 147.
[43] *Americans for Prosperity Foundation v. Becerra,* 919 F. 3d 1177 (2019).
[44] Waitzman, *Free Ride on the Freedom Ride,* 148.
[45] Ibid.,.

Finally, whether the donating group in question holds a minority status or view plays a role in the disclosure of financial contributions according to the substantial restraint maxim. More minor factions with unpopular opinions or historically disadvantaged viewpoints fulfill this category. American political scientist E.E. Schattschneider once quipped that "the flaw in the pluralist heaven is that the heavenly chorus sings in a strong upper-class accent" — this condition of substantial restraint seeks to amplify the ability of lower-class interests to engage in political speech.[46] Hypothetically, a PAC associated with Satanism would fulfill the definition of an "unpopular interest" and would likely be exempt from disclosure according to this condition due to the potential repercussions of public benefaction to candidates. Interests that "espouse dissident beliefs," such as the NAACP in the context of *NAACP v. Alabama,* find an exemption from disclosure per this condition, helping ensure an equitable interest voice in the political donation process.[47]

An adaptation of Waitzman's substantial restraint test provides a feasible case-by-case solution in the judiciary to the issue of campaign finance disclosure; however, it currently neglects to address how non-compliance will be accounted for. By threatening the revocation of nonprofit status for 501(c)(4) organizations that do not follow through on proper disclosure, an additional impetus could be created for honest and committed campaign contributions. According to IRS regulation, 501(c)(4) tax exemption is based on organizational "social welfare" activity.[48] While there is admittedly some gray area regarding what constitutes "social welfare" or political dealings, those groups that do not follow disclosure guidelines per the substantial restraint test, if implemented, could be harming society. Per this logic, placing tax-exempt organizational status on the line in cases of non-compliance to substantial restraint rulings and

[46] Andres, *Lobbying Reconsidered,* 212.
[47] Waitzman, *Free Ride on the Freedom Ride,* 148.
[48] Miller, *Parting the Dark Money Sea,* 343.

resolving the "deficient [bureaucratic] guidance" provided by the FEC and IRS could cooperatively dissuade nonprofit groups from donating millions of dark money dollars to candidates and campaigns.[49]

Even with mechanisms for enforcement of the substantial restraint test, some indistinction exists in what is protected against disclosure and what is not. While the number of donors and amount of money being granted are both reasonably simple to define as necessary for disclosure or protection, declaring what is a dissident belief may be challenging interpretation-wise within the courts. Waitzman advocates that controversial views are "indispensable to creating a robust marketplace of ideas" — however, one could theoretically argue that, in political speech, almost every view could be dissident and disputed.[50] The judiciary may deem dissident beliefs as those that are historically minor or against the status quo to draw the line on this flaw in the substantial restraint methodology; this interpretation faces longitudinal limitations as well, however, as "majority party viewpoints" may not always be in the majority over time.[51] Proponents of the substantial restraint test may need to reconcile that its standards do not include all of the answers and that its premiere limitation lies in its potential for interpretative pliability.

A final consideration to address in dealing with today's campaign finance reform landscape lies in the implications of the *Dobbs v. Jackson Women's Health Organization* decision on the implied right to privacy. While this precedent deals with abortion, the court claims that decisions post-*Roe v. Wade* "abandoned any reliance on a privacy right" — Supreme Court Justice Clarence Thomas wrote for reconsidering privacy-related rights surrounding gay liberties

[49] Miller, *Parting the Dark Money Sea*, 381.
[50] Waitzman, *Free Ride on the Freedom Ride,* 146.
[51] Ibid.*,* 148.

and contraception.[52] Like *NAACP v. Alabama,* the scope of the *Dobbs* decision affects how the courts may consistently approach campaign finance; without an implied right to privacy, there may not be anything protecting dissident, minor, or threatened viewpoints from campaign finance disclosure. While the odds of such a transparency standard are likely slim under the Roberts Supreme Court, any substantial restraint test being implemented would have to combat the implications of the *Dobbs* case's attack on the implied right to privacy. With the *Dobbs* majority opinion outlining that individuals "are not always free to act in accordance with [their] thoughts," all policy solutions with a crux on an implied right to privacy must be aware of the historically dissident considerations of the current Supreme Court.[53]

Transparency surrounding the campaign contribution issue has been an ongoing conversation for decades. As captured by the original sentiments of BCRA, attempting to "break the [hidden] connection between lawmakers and big money contributors" has been of public interest for some time.[54] Nonetheless, interest groups' say in politics is essential to plurality and necessary to the function of American democracy; policy compromise must be struck to balance the public interest of candidate information and the private incentive to speak politically through the campaign finance dollar. A substantial restraint test levied and enforced by the judiciary channels the energy of bold election reform through situational disclosure. If correctly implemented, it could assist in leveling the playing field, dissuading candidates from accepting gargantuan contributory sums, raising transparency for the American voter, and protecting free speech through campaign financial support. To combat the proliferation of dark money, one must shine a light on the nonprofit sources themselves — the substantial restraint doctrine provides

[52] *Dobbs v. Jackson Women's Health Organization*, 945 F. 3d 265 (2022).
[53] Ibid.,.
[54] Cigler and Loomis, *Interest Group Politics,* 215.

"the best approach for balancing First Amendment freedoms with the government interest in an informed electorate."[55]

[55] Waitzman, *Free Ride on the Freedom Ride,* 115.

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