Negative: Democracy

By Kirstin Erickson

Resolved: In democratic elections, the public’s right to know ought to be valued above a candidate’s right to privacy.

This case is intended to counter the affirmative democracy case. The affirmative’s theme is that democracy hinges on citizens having the knowledge they need to make informed decisions. Since that argument is simple and persuasive, you’ll have to take this idea and build on it. Since both the right to privacy and the right to know are valuable, we obviously need to uphold them both as far as possible.

However, when it comes to political candidates, we should only disclose information that is absolutely necessary. Privacy should be the rule, not the exception. Implicit in this case is the idea that individual rights are the of highest importance to democracy, and the cards of evidence support this. Privacy is foundational for democracy, while the right to know is limited and secondary. The applications show specific examples of how this plays out. If you can shift the debate to your theme, you’ll have a persuasive case that sticks in your judges’ minds. Good luck!

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Negative: Democracy

When we talk about the public’s right to know, there are two major spheres where this concept applies: information about government activities and information about individual citizens in government. When it comes to government activities, disclosure is the rule, with exceptions when information is redacted for security purposes. But when it comes to information on individual citizens – such as government officials and political candidates – privacy should be the rule, with information only disclosed when it is absolutely necessary. Because the right to privacy must be upheld if at all possible, please join me in affirming that: In democratic elections, the public’s right to know ought to be valued above a candidate’s right to privacy.

DEFINITIONS

Privacy

Alan Westin 1967 (Alan Westin was a Professor of Public Law & Government Emeritus at Columbia University, former publisher of Privacy & American Business, and former President of the Center for Social & Legal Research) Privacy and Freedom (New York: Atheneum, 1967), p. 7.

The claim of individuals, groups, or institutions to determine for themselves when, how, and to what extent information about them is communicated to others.

Right to Know

Dictionary.com “Right-to-know” <https://www.dictionary.com/browse/right-to-know>

Of or relating to laws or policies that make certain government or company data and records available to any individual who has a right or need to know their contents.

VALUE: Democracy

Definition

Dictionary.com “Democracy” <https://www.dictionary.com/browse/democracy>

Government by the people; a form of government in which the supreme power is vested in the people and exercised directly by them or by their elected agents under a free electoral system.

Reason to Prefer: Purpose of the System

The resolution itself focuses the debate on democracies with its opening clause “in democratic elections.” By using democracy as the standard for this debate, we can discover which side best upholds the government’s purpose, so the system is working the way it was intended to.

CONTENTION 1: In democracy, privacy takes precedence

Privacy is a foundational human good and essential for democracy

Shlomit Yanisky-Ravid and Ben Zion Lahav 2017 (Dr. Shlomit Yanisky-Ravid is a professor of Intellectual Property Law at Fordham University and a full time Senior Law Faculty Member at the Ono Academic College, Law School, the largest law school in Israel. Dr. Ben Zion Lahav is Constitutional Professor of Law at Ono Academic Law School in Israel.) “PUBLIC INTEREST VS. PRIVATE LIVES—AFFORDING PUBLIC FIGURES PRIVACY IN THE DIGITAL ERA: THE THREE PRINCIPLE FILTERING MODEL” <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1633&context=jcl> (brackets added for biography information, other brackets in the original)

Professor Anita Allen [the Henry R. Silverman Professor of Law and professor of philosophy at the University of Pennsylvania Law School] contends that privacy is a “foundational human good[ ],” one that is essential for a free and democratic society. She argues that in certain instances, privacy must be mandated: “[F]or the sake of foundational human goods, liberal societies properly constrain both government coercion and individual choice…”

Privacy is an integral concept for democracy

Deborah G. Johnson, Priscilla M. Regan, and Kent Wayland 2011 (Deborah Johnson was Anne Shirley Carter Olsson Professor of Applied Ethics in the School of Engineering and Applied Science at University of Virginia; Priscilla Regan is a professor in the Department of Public and International Affairs at George Mason University; Kent Wayland is a research associate in the School of Engineering and Applied Science at University of Virginia) “Campaign Disclosure, Privacy and Transparency” <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1585&context=wmborj>

Privacy is an important but elusive concept that is arguably important in democratic government. Julie Cohen, for example, sees a strong connection between information privacy, which promotes individual autonomy and self-development, and vigorous public debate. Paul Schwartz also views information privacy as a conditional requirement for deliberative democracy. Priscilla Regan argues that privacy is not just an individual value but also a public value; it is important for democratic political systems in being essential for the exercise of a number of First Amendment rights, in establishing boundaries on the exercise of governmental power, and also in enabling the development of some commonality among individuals, which is necessary to unite a political community.

Application: Medical History

Sandee LaMotte 2015 (Sandee LaMotte is a medical producer and writer for CNN) “Do voters have the right to know presidential candidates' health histories?” <https://www.cnn.com/2015/12/14/health/presidential-candidate-health-disclosure/index.html>

Excellent or not, what right does the public have to know the intimate details of a candidate's medical history? After all, they are shielded by the same federal privacy laws that protect each of us from undue scrutiny.  
  
"It's a controversial issue because some illness can be blown out of proportion and with modern medicine a person can do well," said Jerrold Post, author of "When Illness Strikes the Leader." "But if a person is suffering from early Alzheimer's or another serious disease, it's quite another story."  
  
History shows that most presidential candidates have kept their medical information private. Only recently have candidates opted to release letters from personal physicians. Few go as far as Sen. John McCain, who released thousands of carefully selected medical records to the press for a few hours during his bid for the 2000 and 2008 nominations.  
  
"It's a very touchy subject," said Dr. Connie Mariano, who served as White House physician for George W. Bush and Bill Clinton. "Having been at the White House for nine years, my opinion is only as it impacts their ability to perform their job in office, which is to make decisions and communicate."  
  
"The public has a right to know if the candidate has a reason to believe he might die in office. Short of that, I think the president has a right to keep his medical and mental health information private," said George Annas, chairman of the department of health law, bioethics and human rights at Boston University School of Public Health.

Application: Campaign Finance Disclosure

Deborah G. Johnson, Priscilla M. Regan, and Kent Wayland 2011 (Deborah Johnson was Anne Shirley Carter Olsson Professor of Applied Ethics in the School of Engineering and Applied Science at University of Virginia; Priscilla Regan is a professor in the Department of Public and International Affairs at George Mason University; Kent Wayland is a research associate in the School of Engineering and Applied Science at University of Virginia) “Campaign Disclosure, Privacy and Transparency” <https://scholarship.law.wm.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1585&context=wmborj>

Campaign finance disclosure (CFD) is an important domain in which electronic reporting has aggravated the tension between privacy and transparency. As a mechanism of accountability, CFD comes directly into conflict with privacy. On the one hand, because the secret ballot and associational privacy are at stake, there is a strong case to be made for privacy. On the other hand, the privacy interest is often not supported by constitutional or statutory law, and earlier Supreme Court rulings clearly supported the principle that “individual privacy interests can be outweighed by public interests that are served by government collection and use of personally-identifiable data.” CFD is especially important here because the secret ballot and associational privacy are not just individual privacy interests but are public goods essential to democratic governance. In other words, CFD may constitute one of the strongest cases for privacy protection to trump disclosure.

Application: FOIA

The right to know relates to government activities, not information on private citizens

Fred H. Cate, D. Annette Fields, and James K. McBain 1994 (Fred Cate is a professor of law at Indiana University School of Law-Bloomington and Senior Fellow at The Annenberg Washington Program in Communications Policy Studies. D. Annette Fields has a J.D. from Loyola University of Los Angeles and represent clients in connection with Freedom of Information Act claims before administrative agencies. James McBain has an LL.M. from Georgetown University Law Center and J.D. from Indiana University School of Law-Bloomington) “THE RIGHT TO PRIVACY AND THE PUBLIC'S RIGHT TO KNOW: The "Central Purpose" of the Freedom of Information Act” <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1740&context=facpub>

Taken together, these three functions mark the broad purpose of the Act which, according to the United States Supreme Court, is "to open agency action to the light of public scrutiny." The unanimous Court wrote in 1989 that the Act "indeed focuses on the citizens' right to be informed about 'what their government is up to.' . . . FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny…"

In short, the release of information possessed by the government about private citizens constitutes an unwarranted invasion of those citizens' privacy; such information, therefore, is not subject to disclosure under Exemption 7(C).

In order to achieve the Act's intended purpose, the "official information" test should be the touchstone for disclosure. After all, "the FOIA's central purpose is to ensure that the Government's activities be opened to the sharp eye of public scrutiny, not that information about private citizens that happens to be in the ware-house of the government be so disclosed.”

Such a policy reflects not only the constitutionally protected right to privacy, but also protects important societal interests such as the effectiveness and efficiency of the judicial system; law enforcement and administrative regulations; the timely disclosure of appropriate information under the FOIA; and, the efficient and cost-effective operation of the government.

Only information that will serve the "central purpose" of FOIA – ensuring that "the Government's activities be opened to the sharp eye of public scrutiny" – should ever be subject to disclosure under the FOIA.

CONTENTION 2: In democracy, the right to know is limited

The right to know is limited even for citizens in a democracy

Christopher Paul and James J. Kim 2004 (Christopher Paul is a senior social scientist at the RAND Corporation and professor at the Pardee RAND Graduate School; James Kim is a Research Fellow and the Program Chair of the American Politics and Policy program and the Center for Regional Studies at the Asian Institute for Policy Studies as well as an adjunct lecturer in the Executive Master of Public Policy and Administration Program at Columbia University) “Reporters on the Battlefield: The Embedded Press System in Historical Context” <https://www.jstor.org/stable/10.7249/mg200rc.14>

What exactly the public needs or does not need to know will depend on the circumstances of the cases and the surrounding context. It seems clear that the members of the public do not have the right to know everything in order to govern/participate effectively because they do not need to know everything to do these things.

The rule of the people does not mean their right to know trumps privacy

Christopher Paul and James J. Kim 2004 (Christopher Paul is a senior social scientist at the RAND Corporation and professor at the Pardee RAND Graduate School; James Kim is a Research Fellow and the Program Chair of the American Politics and Policy program and the Center for Regional Studies at the Asian Institute for Policy Studies as well as an adjunct lecturer in the Executive Master of Public Policy and Administration Program at Columbia University) “Reporters on the Battlefield: The Embedded Press System in Historical Context” <https://www.jstor.org/stable/10.7249/mg200rc.14> (brackets added)

Edward Levi [former law professor, president of the University of Chicago, and United States Attorney General] puts it this way:

the people’s right to know cannot mean that every individual or interest group may compel disclosure of

the papers and effects of government officials whenever they bear on public business. Under our

Constitution, the people are the sovereign, but they do not govern by the random and self selective

interposition of private citizens.

Affirmative Counter-Brief: Democracy

The best way to counter this negative case is through the arguments found in the affirmative democracy case. The negative will inevitably wax eloquent about the importance of individual rights and the right to privacy for a thriving democracy. This is difficult to argue, so just absorb it as true and then move on to show that privacy, as important as it is, must always be limited for more important purposes. In your case, that more important purpose is the public’s right to know and ultimately democracy itself. You can agree that privacy and individual rights are extremely important, while still arguing that something else matters more. Voting affirmative doesn’t mean throwing away any semblance of privacy – it just means that political candidates will have to reveal extra information so that voters know they’re making the right choices. The negative side might try to paint you as undermining individual rights, but that’s not true. On the contrary, you’re protecting this form of government that we hold so dear.

There are several cards of evidence in the affirmative case that work well against this negative case, and they are referenced again below. In order to counter the negative arguments about individual rights, however, I have another card showing that political candidates have less of a right to privacy because they’re running for office.

Politicians deserve a greater degree of public scrutiny because of citizens’ democratic rights

Shaun Young 2018 (Shaun Young is a Doctor of Philosophy and researcher at the University of Toronto in the Department Of Political Science) “Politicians’ Privacy” <https://www.academia.edu/39130958/POLITICIANS_PRIVACY>

In this essay I argue that, while politicians should not be expected to forsake all hope of privacy, the voluntary character of, and responsibilities attached to, elected political office, coupled with citizens’ democratic right to choose their political representatives freely, renders it ethically legitimate for the “public” and many of the “private” elements of politicians’ lives to receive a degree of public scrutiny that greatly exceeds that experienced by their fellow citizens.

It is problematic if voters do not have the information they need

Robert Streiffer, Alan P. Rubel and Julie R. Fagan 2006 (Robert Streiffer is Professor of Philosophy and Bioethics at the University of Wisconsin, Madison; Alan Rubel is an associate professor in the Center for Law, Society & Justice at the University of Wisconsin, Madison; Julie Fagan is Clinical Associate Professor of Medicine at the University of Wisconsin Women's Health Center and serves on the hospital ethics committees for both the University of Wisconsin Hospital and Meriter Hospital) “Medical Privacy and the Public's Right to Vote: What Presidential Candidates Should Disclose” <https://doi.org/10.1080/03605310600860825>

On any plausible conception of democratic governance, citizens have the right to vote, and it is therefore morally problematic if voters do not have access to important facts about matters they vote on. For example, it would be problematic if citizens were unable to learn about candidates’ views on important policy matters before they choose between them. There are numerous democratic principles that underwrite the right to vote: that those who govern should do so with the consent of the governed; that the government should represent the people; and that the people should be able to hold the government accountable.

Disclosure of private information is justified for public figures

Shlomit Yanisky-Ravid and Ben Zion Lahav 2017 (Dr. Shlomit Yanisky-Ravid is a professor of Intellectual Property Law at Fordham University and a full time Senior Law Faculty Member at the Ono Academic College, Law School, the largest law school in Israel. Dr. Ben Zion Lahav is Constitutional Professor of Law at Ono Academic Law School in Israel.) “PUBLIC INTEREST VS. PRIVATE LIVES—AFFORDING PUBLIC FIGURES PRIVACY IN THE DIGITAL ERA: THE THREE PRINCIPLE FILTERING MODEL” <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1633&context=jcl>

According to our guidelines, the more influential the figure is to the public, the smaller his/her privacy balloon is and the more we can publish about this person. For example, prime ministers, according to the balloon theory, have the smallest balloon around them and enjoy only a small amount of privacy. In the case of a prime minster and according to the criteria suggested in this paper, we can justify almost all publications about him or her on a wide range of public and private topics in a way that almost all information can be released to the public. A prime minister is elected by the public to a role defined by law as having a wide range of influence on each and every citizen. Any information about a leader of a country who possesses more power and authority than any other individual would therefore have an important value to the public. As a result, the right for the public to have access to this information overrules the prime minister’s right to privacy. Even “private” information about a spouse, vacation habits, the way s/he treats his/her children, and personal health conditions may be important according to the criteria we suggest, as they might influence his actions and, hence, the public. Therefore, Internet publications of this kind might be justified.

For politicians, otherwise private information is important for the public

Judy Nadler and Miriam Schulman 2015 (Judy Nadler is senior fellow in government ethics and Miriam Schulman is associate director for the Markkula Center for Applied Ethics at Santa Clara University.) “The Personal Lives of Public Officials” <https://www.scu.edu/government-ethics/resources/what-is-government-ethics/the-personal-lives-of-public-officials/>

Everyone, including public figures, is entitled to privacy. But when a person goes into public life, he or she must understand: Certain issues that might be considered private for a private individual can become matters of reasonable public interest when that individual runs for office. Becoming a public servant means putting the public's interest ahead of your own.

What does that look like in practice? Everyone will draw the line between personal and public in a slightly different place, but generally, if a private matter affects the performance of the officeholder's duties, most people would agree that it is no longer private. So, for example, the president of the United States submits to a yearly physical, which is made public, because his or her health is of such key importance to the nation. Similarly, illnesses that affect job performance of local officials may be legitimate subjects of inquiry. Behaviors that might impede performance, like substance abuse, are matters of public interest. Financial problems, especially in a person with budgetary responsibilities, may be germane.

Because a politician represents the public, constituents will be better represented if he or she practices the virtues of honesty and trustworthiness in both personal and private life. The reputation of local officials may have an important impact on the business climate of the city or public support for local initiatives, so the personal behavior of politicians may become a legitimate area of public concern.

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