Negative: Good Governance

By Mark Csoros

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

This case argues that the best way to improve the functioning of government is to respect the privacy of candidates. To do that effectively, the case starts with the value of Good Governance, and uses two contentions to support that value. First up, Contention 1 argues that disclosure can actually have a harmful effect on political discourse and the level of relevant information that voters possess. Contention 2 focuses on the stigmatization of illness that undue medical disclosure can cause, and how that can lead to worse health effects.

The key to this case is underlining that more information doesn’t mean better electoral results. Rather, additional information about candidates can harm voters’ decision-making processes, unfairly stigmatize medical conditions, and lead to worse electoral outcomes.

Negative: Accountability 3

DEFINITIONS 3

Democratic Elections 3

Right to Know 3

Privacy 3

VALUE: Accountability 3

Definition 3

Reason to Prefer: End Goal 3

CONTENTION 1: Candidates’ Privacy Leads to Better Governance 4

Medical Privacy Better Serves the Electorate 4

Privacy Encourages Better Health 4

Health Disclosures are Less Relevant 4

Some Disclosures are Distractions 5

Curiosity, not True Concern 5

Distracts from Policy 5

Unfair Attacks 6

Political Weaponry 6

Application: Sarah Palin, 2008 6

CONTENTION 2: Medical Disclosure Creates Worse Health Outcomes 7

Stigmatization 7

Dangerous Precedent 7

Privacy Violations Prevent Aid 7

Less Incentive to Seek Treatment 8

Affirmative Counter-Brief 9

Disseminating Information Increases Accountability 9

Voters Can Decide Fairly 9

Hidden Mental Illness 10

Candidates Surrender Privacy 10

Works Cited 11

Negative: Accountability

The point of democratic elections is to enable good and fulfill the fundamental promise of democracy: that every bit of a government’s power is derived from the consent of the governed, and that every citizen has the opportunity to give or withdraw that consent every time they approach the ballot box. Because I believe in accountable government and the consent of the governed, I stand opposed to the resolution and resolved that in democratic elections, a candidate’s right to privacy ought to be valued above the public’s right to know.

DEFINITIONS

Democratic Elections

Former U.S. Ambassador to the United Nations Jeanne Kirkpatrick, November 1982. “Democratic Elections and Democratic Government”; Presented at a conference held by the American Enterprise Institute and the U.S. Department of State. <https://www.jstor.org/stable/20672013?seq=1>

“Democratic elections are not merely symbolic legitimations or collective affirmations. They are competitive, periodic, inclusive, definitive elections in which the chief decision-makers in a government are selected by citizens who enjoy broad freedom to criticize government, to publish their criticisms, and to present alternatives.”

Right to Know

Oxford’s Lexico Dictionary. “Right-to-know” <https://www.lexico.com/en/definition/right-to-know>

“Of or pertaining to laws or policies that make certain government or company records available to any individual who can demonstrate a right or need to know their contents.”

Privacy

Cornell Law School’s Legal Information Institute. “Right to Privacy” <https://www.law.cornell.edu/wex/right_to_privacy>

“The right not to have one's personal matters disclosed or publicized; the right to be left alone.”

VALUE: Accountability

Definition

Cambridge Dictionary. “Accountability.” <https://dictionary.cambridge.org/us/dictionary/english/accountability>

“the fact of being responsible for what you do and able to give a satisfactory reason for it, or the degree to which this happens.”

Reason to Prefer: End Goal

Winston Churchill once said that “democracy is the worst form of government, expect for all those other forms that have been tried from time to time.” The end goal of democratic elections is to keep that reputation intact, and to promote good governance.Because good governance is the end goal of democratic elections, good governance should be the value chosen to be the foundational goal of this debate round.

CONTENTION 1: Candidates’ Privacy Leads to Better Governance

Medical Privacy Better Serves the Electorate

Harvard Law School Graduate and health ethics expert George J. Annas, 1995. (Annas is the William Fairfield Warren Distinguished Professor at Boston University, Director of the Center for Health Law, Ethics & Human Rights at Boston University School of Public Health, a member of the Department of Health Law, Policy and Management at the School of Public Health, and a Professor at the School of Law and School of Medicine. He is author or editor of 20 books on health law and bioethics, a member of the National Academy of Medicine and a Fellow of the American Association for the Advancement of Science, and the co-founder of Global Lawyers & Physicians, a NGO dedicated to promoting health and human rights. He has a Bachelor’s degree in Economics, a Master’s degree in Public Health, and a J.D., all from Harvard) “The Health of the President and Presidential Candidates — The Public's Right to Know”; The New England Journal of Medicine <https://www.nejm.org/doi/full/10.1056/NEJM199510053331420>

“The public will learn much more about a candidate's fitness for the presidency by the candidate's performance in the campaignthan by the release of his or her medical records. Moreover, the public is likely to be best served by candidates and Presidents who seek medical care when they need it, without fear that doing so will jeopardize their political future.”

Privacy Encourages Better Health

Harvard Law School Graduate and health ethics expert George J. Annas, 1995. (Annas is the William Fairfield Warren Distinguished Professor at Boston University, Director of the Center for Health Law, Ethics & Human Rights at Boston University School of Public Health, a member of the Department of Health Law, Policy and Management at the School of Public Health, and a Professor at the School of Law and School of Medicine. He is author or editor of 20 books on health law and bioethics, a member of the National Academy of Medicine and a Fellow of the American Association for the Advancement of Science, and the co-founder of Global Lawyers & Physicians, a NGO dedicated to promoting health and human rights. He has a Bachelor’s degree in Economics, a Master’s degree in Public Health, and a J.D., all from Harvard) “The Health of the President and Presidential Candidates — The Public's Right to Know”; The New England Journal of Medicine <https://www.nejm.org/doi/full/10.1056/NEJM199510053331420>

“The things we want to know about the health of Presidents and presidential candidates tell us much more about ourselves than about the Presidents and would-be Presidents. They tell us what we fear, and what we hope for. Reasonable medical disclosures are now taken for granted and may not be too harmful. But we are rapidly approaching the point of diminishing returns, and unless we want to discourage our Presidents, presidential candidates, and possible presidential candidates from seeking medical assistance in times of physical and psychological distress, we must show at least some respect for their medical privacy by setting limits to expected disclosures.”

Health Disclosures are Less Relevant

Harvard Law School Graduate and health ethics expert George J. Annas, 1995. (Annas is the William Fairfield Warren Distinguished Professor at Boston University, Director of the Center for Health Law, Ethics & Human Rights at Boston University School of Public Health, a member of the Department of Health Law, Policy and Management at the School of Public Health, and a Professor at the School of Law and School of Medicine. He is author or editor of 20 books on health law and bioethics, a member of the National Academy of Medicine and a Fellow of the American Association for the Advancement of Science, and the co-founder of Global Lawyers & Physicians, a NGO dedicated to promoting health and human rights. He has a Bachelor’s degree in Economics, a Master’s degree in Public Health, and a J.D., all from Harvard) “The Health of the President and Presidential Candidates — The Public's Right to Know”; The New England Journal of Medicine <https://www.nejm.org/doi/full/10.1056/NEJM199510053331420>

“Senator Eugene McCarthy was right to protect his medical privacy in the 1976 presidential campaign. He was also right to insist that a President be elected “on the basis of his or her record of service, of thought about the issues and programs to deal with them, and not on the basis of any private status such as that of patient.” U.S. Presidents have always been more likely to be killed or disabled by assassins than by diseases, and the Secret Service thus has more to do with the President's health and safety than the President's physicians.”

Some Disclosures are Distractions

Harvard Law School Graduate and health ethics expert George J. Annas, 1995. (Annas is the William Fairfield Warren Distinguished Professor at Boston University, Director of the Center for Health Law, Ethics & Human Rights at Boston University School of Public Health, a member of the Department of Health Law, Policy and Management at the School of Public Health, and a Professor at the School of Law and School of Medicine. He is author or editor of 20 books on health law and bioethics, a member of the National Academy of Medicine and a Fellow of the American Association for the Advancement of Science, and the co-founder of Global Lawyers & Physicians, a NGO dedicated to promoting health and human rights. He has a Bachelor’s degree in Economics, a Master’s degree in Public Health, and a J.D., all from Harvard) “The Health of the President and Presidential Candidates — The Public's Right to Know”; The New England Journal of Medicine <https://www.nejm.org/doi/full/10.1056/NEJM199510053331420>

“Some medical information is obvious or nonstigmatizing, and its disclosure is probably harmless. Both Clinton and Dole, for example, have made public their serum cholesterol levels, weight, and blood pressure, and these numbers have already been used in presidential politics. Senator Dole remarked at the July 1995 meeting of the National Governors' Association, “My weight is lower than Clinton's. My cholesterol is lower than Clinton's. My blood pressure is lower than Clinton's. But I am not going to make health an issue in 1996.” Clinton, who spoke to the same gathering a few hours later, said that he believed his resting pulse rate was actually lower than Dole's, but that this was not Dole's fault because “I don't have to deal with Phil Gramm every day.” However, to the extent that cholesterol levels and weight are used as measures of virtue, all this is nonsense and is likely to distract us from focusing on the substantive policy differences between the candidates.”

Curiosity, not True Concern

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.)“Stop Asking the Candidates to Release Their Medical Records”; Slate https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

“But demands for candidates to release their medical records have far more to do with media curiosity and political maneuvering than any genuine concern about whether Clinton or Trump has a condition that would prevent him or her from serving out his or her terms. The media frenzy around each candidate’s medical history — whose cholesterol is higher? How many colon polyps does each have? — has distracted from an already distracted presidential campaign embarrassingly devoid of substance. The central question raised by this discussion is not what we—as voters, the media, or politicos—should know about a candidate’s health. It’s why we care so little about a candidate’s policies while we devotedly follow the drama. We’re now obsessed with an apparently exotic disease called pneumonia, but we still care so little about whether millions of Americans can get treatment for it.”

Distracts from Policy

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.)“Stop Asking the Candidates to Release Their Medical Records”; Slate https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

But when asking candidates to release medical records, we should first ask ourselves: What problem are we trying to solve? Is it worth solving? And what are the costs of solving it? The problem with this presidential race is not that we don’t know enough about the health of the candidates running. It’s that we’d rather theorize about that than debate the policies they’re proposing.

Unfair Attacks

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.)“Stop Asking the Candidates to Release Their Medical Records”; Slate https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

“Both Clinton and Trump have lived so publicly for so long that it seems near impossible either is hiding a medical condition severe enough to actually impede on his or her ability to serve. And beyond a few major illnesses—active cancer, serious neurologic disease, advanced heart failure—medicine has a surprisingly difficult time predicting health going forward. Even in relatively straightforward cases, prognosticating is notoriously hard for physicians, and no amount of disclosure can predict the future. Consider the history of presidents dying in office. Eight American presidents—or about 18 percent of officeholders—have died before finishing their terms. Of those, half died from natural causes, and two died of infections that would have been impossible to forecast. Careful perusal of medical records, then, is unlikely to give us a clear answer about whether a president will survive his or her term; it is, however, likely to be used as political weaponry to unfairly attack candidates.”

Political Weaponry

Opinion Editor at The Guardian Megan Carpentier, August 2015. (At the time of publication, Carpentier was the Opinion Editor at the Guardian, where she was the Deputy Opinion Editor from April 2014 to January 2015, and a writer from February 2016 to November 2016. She helped launch and is currently the Editor of THINK, NBC’s first-ever opinion platform, and holds a graduate MSFS degree in International Business and Public Policy from Georgetown University). “Medical Records Must Stay Private - Even For Prospective Presidents”; The Guardian https://www.theguardian.com/commentisfree/2015/aug/07/presidential-candidate-medical-records-discrimination-transparency

“The cyclical focus on each presidential candidate’s medical records – which has begun in earnest with Hillary Clinton this week and extended to Jeb Bush’s diet – is a political charade designed to allow their opponents to mine for political cudgels what in any other circumstance would be appropriately confidential medical records. But electing a president who later dies in office or becomes physically incapable of serving in the role is an entirely possible and provided-for (if not predictable) circumstance of the US political system, and no amount of listing candidates’ colonoscopy results will prevent it.”

Application: Sarah Palin, 2008

Opinion Editor at The Guardian Megan Carpentier, August 2015. (At the time of publication, Carpentier was the Opinion Editor at the Guardian, where she was the Deputy Opinion Editor from April 2014 to January 2015, and a writer from February 2016 to November 2016. She helped launch and is currently the Editor of THINK, NBC’s first-ever opinion platform, and holds a graduate MSFS degree in International Business and Public Policy from Georgetown University). “Medical Records Must Stay Private - Even For Prospective Presidents”; The Guardian https://www.theguardian.com/commentisfree/2015/aug/07/presidential-candidate-medical-records-discrimination-transparency

“Goodness knows the Babygate proponents in 2008 weren’t interested in whether Sarah Palin’s running habits were a put-on or not: they wanted to know, in more detail than they received, about the contents of her uterus in order to persuade Americans that she was lying about the parentage of her youngest child. (She was not. And it was absurd to suggest that she was.)”

CONTENTION 2: Medical Disclosure Creates Worse Health Outcomes

Stigmatization

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.)“Stop Asking the Candidates to Release Their Medical Records”; Slate [brackets added to evidence to provide context] https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

“It [Disclosure of medical records] could also stigmatize Americans struggling with certain diseases. Medical information is easy to manipulate and mischaracterize. For example, Clinton has hypothyroidism, an exceedingly common and easily treated condition. But it’s not unreasonable to expect her opponents to raise questions about whether it affects her “stamina.” What does that mean for the millions of Americans with hypothyroidism? Are they unfit for their jobs? If you have hypothyroidism, are you?”

Dangerous Precedent

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.) “Stop Asking the Candidates to Release Their Medical Records”; Slate https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

“Demanding wholesale release of candidates’ medical records sets a dangerous and inappropriate precedent. For one thing, releasing such reports is no easy business. McCain’s fairly organized release of 1,000-plus pages of records was mostly possible thanks to the highly systemized health care he received as a veteran. This onslaught of documents would be difficult to execute and hard for reporters and lay people to analyze, and it would offer little insight into whether a person is likely to survive his or her term in office. But it would provide ample ammunition for speculation, manipulation, and stigmatization under the pretense of transparency.”

Privacy Violations Prevent Aid

Harvard Law School Graduate and health ethics expert George J. Annas, 1995. (Annas is the William Fairfield Warren Distinguished Professor at Boston University, Director of the Center for Health Law, Ethics & Human Rights at Boston University School of Public Health, a member of the Department of Health Law, Policy and Management at the School of Public Health, and a Professor at the School of Law and School of Medicine. He is author or editor of 20 books on health law and bioethics, a member of the National Academy of Medicine and a Fellow of the American Association for the Advancement of Science, and the co-founder of Global Lawyers & Physicians, a NGO dedicated to promoting health and human rights. He has a Bachelor’s degree in Economics, a Master’s degree in Public Health, and a J.D., all from Harvard) “The Health of the President and Presidential Candidates — The Public's Right to Know”; The New England Journal of Medicine <https://www.nejm.org/doi/full/10.1056/NEJM199510053331420>

“Much more serious issues are raised by sensitive medical information that is inherently embarrassing or invites irrational prejudice. The fact of having consulted a psychiatrist is one such area, and I believe this should not be disclosed by candidates. A history of institutional mental health care is even more prejudicial, as the Eagleton case illustrates. We should encourage our leaders to seek such help whenever they feel they need it, both for their own sakes and for ours, and protecting their medical privacy is essential if this is to happen.”

Less Incentive to Seek Treatment

Yale M.D. and Harvard School of Government graduate Dhruv Khullar, September 2016. (Khullar is a physician and assistant professor of healthcare policy at Weill Cornell Medical College, and the Director of Policy Dissemination at the Physicians Foundation Center for Physician Practice and Leadership. He holds a B.A. in Biology and an M.D. from Yale University, as well as a Masters in Public Policy degree from Harvard’s Kennedy School of Government.) “Stop Asking the Candidates to Release Their Medical Records”; Slate https://slate.com/technology/2016/09/the-candidates-shouldnt-release-their-medical-records.html

Good medical care requires honesty, but it also requires privacy. Without this, we rob people (and even political candidates are people) of the ability to seek support and help. If releasing records becomes routine, aspiring public leaders may forego treatment they need, or withhold information from their doctors, to avoid creating a paper trail documenting their medical conditions.

Affirmative Counter-Brief

To counter this Negative case, you’ll want to argue that democracy requires that voters are in control, and ought to be able to access more information about the candidates that represent them. The arguments in this counter brief are very similar to the arguments in the Affirmative “Accountability” case, so you can look there if you need additional resources.

Disseminating Information Increases Accountability

Ph.D. of Economics Yukihiro Yazaki 2017. (Yazaki received his Ph.D. from Aoyama Gakuin University College of Economics. He has published numerous journal articles on political accountability and the role of the media in disseminating information). “Newspapers and political accountability: evidence from Japan”; Public Choice Vol. 172. https://link.springer.com/article/10.1007%2Fs11127-017-0444-x

“Local newspapers are expected to monitor local governments’ behavior. However, national newspapers could also contribute to local governments’ accountability by attracting nationwide attention to a local policy issue. Using the method developed by Snyder and Strömberg (J Polit Econ 118:355–408, [**2010)**](https://link.springer.com/article/10.1007/s11127-017-0444-x#ref-CR29), I construct a variable that measures the weighted market share of locally circulated newspapers in an administrative district in Japan. I find that an increase in the market share of local newspapers is associated with a reduction in local public works spending (seen as rents for local interest groups), which indicates an improvement in political accountability. In addition, the accountability effect of local newspapers becomes greater one year after national newspapers focus readers’ attentions on the issue of unnecessary public works. This result suggests that national newspapers serve as an agenda setter and complement local newspapers for strengthening local political accountability.”

Voters Can Decide Fairly

Ph.D.s Howard Markel and Alexandra M. Stern, 2008. (Markel is a Distinguished Professor of the History of Medicine and the Director of the Center for the History of Medicine at the University of Michigan’s School of Public Health. He holds an M.D. from the University of Michigan and a Ph.D. in the History of Science, Medicine and Technology from Johns Hopkins University. Stern has a Ph.D. in History from the University of Chicago. She is the Associate Dean for the Humanities, at the University of Michigan’s College of Literature, Science, and the Arts.) “Presidential Health and the Public's Need to Know”; The Journal of the American Medical Association <https://jamanetwork-com.ezproxy.lib.utexas.edu/journals/jama/fullarticle/181995>

“In 2004, 92% of Gallup Poll respondents, regardless of party affiliation, agreed that presidential nominee John Kerry's prostate cancer and treatment would likely not disrupt his ability to govern. Seventy-five percent of Americans indicated that knowing a candidate had consulted a mental health care clinician for stress or depression would not affect their vote.”

Hidden Mental Illness

Duke University researchers Jonathan Davidson, Kathryn Connor, and Marvin Swartz, 2006. (Davidson is a Professor Emeritus of Psychiatry and Behavioral Sciences at Duke University, and received his M.D. from University College, London. Connor is the Research Director of the Anxiety and Traumatic Stress Program at Duke University and an Associate Professor in the Department of Psychiatry and Behavioral Sciences at Duke University, she received her M.D. from the University of Maryland. Swartz is a Professor of Psychiatry and Behavioral Sciences at Duke, a member of the MacArthur Foundation Research Network on Mandated Community Treatment, and received his M.D. from Tufts University) “Mental Illness In U.S. Presidents Between 1776 and 1974: A Review of Biographical Sources”; The Journal of Nervous and Mental Disease, Volume 194(1) https://ovidsp-dc2-ovid-com.ezproxy.lib.utexas.edu/ovid-a/ovidweb.cgi?QS2=

“Numerous historical accounts suggest the presence of mental illness in US Presidents, but no systematic review has been undertaken for all holders of this office. We reviewed biographical sources regarding mental illness in 37 US Presidents from 1776 to 1974. Material was extracted by one of the authors and given to experienced psychiatrists for independent review of the correspondence of behaviors, symptoms, and medical information in source material to DSM-IV criteria for Axis I disorders. Levels of confidence were given for each diagnosis. Eighteen (49%) Presidents met criteria suggesting psychiatric disorder: depression (24%), anxiety (8%), bipolar disorder (8%), and alcohol abuse/dependence (8%) were the most common. In 10 instances (27%), a disorder was evident during presidential office, which in most cases probably impaired job performance. Mental illness in heads of state is a topic deserving further attention.”

Candidates Surrender Privacy

Ph.D.s Howard Markel and Alexandra M. Stern, 2008. (Markel is a Distinguished Professor of the History of Medicine and the Director of the Center for the History of Medicine at the University of Michigan’s School of Public Health. He holds an M.D. from the University of Michigan and a Ph.D. in the History of Science, Medicine and Technology from Johns Hopkins University. Stern has a Ph.D. in History from the University of Chicago. She is the Associate Dean for the Humanities, at the University of Michigan’s College of Literature, Science, and the Arts.) “Presidential Health and the Public's Need to Know”; The Journal of the American Medical Association <https://jamanetwork-com.ezproxy.lib.utexas.edu/journals/jama/fullarticle/181995>

“Today, voters are demanding and receiving more information about the lives of presidential nominees and elected presidents and vice presidents than ever before in US history. The inescapable reality of 21st-century instantaneous communications is that those who aspire to the US presidency surrender almost all privileges and prerogatives related to privacy whether they wish to or not.”

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