Negative: Human Rights

By Steven Errico

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

Even though the public has a right to know a great deal about the candidate for whom they vote, that candidate must also be viewed as an individual who has their own rights as well. It is immoral to violate human rights to protect other human rights.

Negative: Human Rights 2

DEFINITIONS 2

Right to Know 2

Right to Privacy 2

VALUE: Human Rights 2

Definition 2

Reason to Prefer: Provided in the Resolution 2

CONTENTION 1: Violating human rights to protect human rights is self-defeating 3

Political candidates are still individuals with rights 3

Application 1: President Trump’s Tax Returns 3

CONTENTION 2: Undervaluing candidate privacy is dangerous 4

Indiscriminate disclosure implicates associated third parties 4

Application 1: The Jack Ryan Scandal 4

Affirmative Counter-Brief: Human Rights 5

No Reasonable Expectation of Privacy in Political Campaigns 5

Different Protections for Public Figures 6

Follow the money 7

Electing transparency 7

Works Cited 9

Negative: Human Rights

It’s safe to say that most citizens value openness in their government. We want to know what’s going on and keep the government accountable. When we can’t do this, there’s a lot of room for corruption and abuse. The same is true with political candidates who aspire to hold office. In order for our system of democracy to uphold its duty to protect the rights of the people, voters must be able to examine every aspect of a candidate’s fitness for office, in the same way they should be able to examine the workings of every elected official.

DEFINITIONS

Right to Know

The American Heritage Dictionary “Right to Know” <https://www.ahdictionary.com/word/search.html?q=right+to+know>

Of or relating to policies and laws that make some governmental records and other information available to a person who can demonstrate a right or need to know the contents.

Right to Privacy

Merriam-Webster Legal “Right of Privacy” <https://www.merriam-webster.com/legal/right%20of%20privacy>

**:**the right of a person to be free from intrusion into or publicity concerning matters of a personal nature

VALUE: Human Rights

Definition

American Heritage Dictionary “Human Rights” [https://www.ahdictionary.com/word/search.html?q=human+rights](https://www.ahdictionary.com/word/search.html?q=human+rights&submit.x=34&submit.y=23)

The basic rights and freedoms to which all humans are considered to be entitled, often held to include the rights to life, liberty, equality, and a fair trial, freedom from slavery and torture, and freedom of thought and expression.

Reason to Prefer: Provided in the Resolution

The resolution is asking us to analyze these issues in light of the rights people have. Because of this it is necessary to look at human rights, the foundation of all of our basic rights.

CONTENTION 1: Violating human rights to protect human rights is self-defeating

Political candidates are still individuals with rights

Ashoka University 2018 (The Foundation is a society of like-minded individuals founded in 1979 to achieve the following objectives: To promote, support, encourage and undertake social science, statistical and scientific research pertaining to the print, electronic, film and other media with a view to enhancing and strengthening their freedom and independence; to uphold constitutional freedom of speech, expression and information; and to encourage freedom in society and enhance the quality of life through media and process of communication.) “The right to privacy vs. the right to know” <http://asu.thehoot.org/free-speech/privacy/the-right-to-privacy-vs-the-right-to-know-10524>

It is important to discuss this issue because privacy has a dangerous dimension to it, in that it abridges other rights like the right to speech and the right to know under Article 19(1)(a). Of what use is this fundamental right if it can be abridged by the court in order to favour the fundamental right to know of the voter under Article 19(1)(a)? Can courts favour one set of fundamental rights over another? If so, what is the basis of making such a judgment?

Are we to understand that fundamental rights are status driven, in that citizens who are running for public office automatically lose their fundamental right to privacy? The rationale for fundamental rights is that they are so sacrosanct that they cannot be sacrificed or abridged by the state. They may be subject to reasonable restrictions but the restriction cannot eviscerate the very nature of the right.

More importantly, what of the fundamental right of the spouse or the dependent? How can they be stripped of their fundamental right merely because a blood relative, who is an autonomous individual, has taken a decision to stand for public office? Of what use is a fundamental right that is contingent on the behavior of another individual?

Application 1: President Trump’s Tax Returns

Forbes Press 2018 (Author David Herzig a Tax Principal with Ernst & Young LLP in the US-West Region.) “President Trump and Tax Return Privacy” [https://www.forbes.com/sites/davidherzig/2018/04/05/president-trump-and-tax-return-privacy/#5caf16f595eb](https://www.forbes.com/sites/davidherzig/2018/04/05/president-trump-and-tax-return-privacy/%22%20%5Cl%20%225caf16f595eb)

April 15 is just around the corner. There will be plenty of articles written about various components of filing your tax returns. From comparative articles about how other countries [pay](http://time.com/money/4862673/us-tax-burden-vs-oecd-countries/) taxes to articles about what to do about missing [receipts](https://www.forbes.com/sites/kellyphillipserb/2018/01/11/due-dates-for-your-w-2-1099-other-tax-forms-in-2018-and-what-to-do-if-theyre-missing/#57331a8b367e) many a yarn will be spun. Inevitably there will be an article or [tweet](https://twitter.com/realDonaldTrump/status/654706635663773696) about President Trump filing his tax returns. From a picture of President Trump doing the most basic civic duty a second narrative will materialize about his failure to make public his [prior](http://www.nytimes.com/2016/10/04/us/politics/donald-trump-taxes.html?_r=0) tax returns.

Just to be clear, it is not debatable that under the applicable federal and state laws all tax returns are private, including politicians. What is debatable is whether there is a norm that requires President Trump to disclose his tax returns. This post will explore the strength or weakness of that norm.

As a starting point, normally American’s believe that their tax returns should be private. They do not think, however, that President Trump should be afforded privacy as related to his tax returns. In polls, the [populace](https://poll.qu.edu/national/release-detail?ReleaseID=2522) wants disclosure of the president’s tax returns 67%-24% with some polls showing that 64% of Republican’s desire [disclosure](https://www.axios.com/64-of-republicans-want-to-see-trumps-tax-returns-1513301586-84a1e448-f844-4ff5-87f9-c6c6bae3fbb4.html). The underpinning of the public wanting to violate President Trump’s privacy over his finances relates back to when he broke a perceived long-standing norm by failing to release his tax returns during his presidential candidacy.

Impact: Legal protections exist equally for all Americans for a reason.

CONTENTION 2: Undervaluing candidate privacy is dangerous

Indiscriminate disclosure implicates associated third parties

Office of the Privacy Commissioner of Canada 2012 (Colin J. Bennett (BA, MA, University of Wales; Ph.D, University of Illinois, Urbana-Champaign) is a Professor of Political Science at the University of Victoria. His research has focused on the comparative analysis of surveillance technologies and privacy protection policies at the domestic and international levels. In addition to numerous scholarly and newspaper articles, he has published six books on privacy and numerous policy reports on privacy protection for Canadian and international agencies. Robin M. Bayley (BA, MPA, University of Victoria), President of Linden Consulting Inc., Privacy & Policy Advisors, has co-authored several chapters and reports on privacy regulation and methodologies such as privacy impact assessments. She helps organizations subject to Canadian privacy laws identify privacy risks and address them with policies and processes, and has assisted privacy regulators develop privacy compliance guides and tools for organizations and the public.) “Canadian Federal Political Parties and Personal Privacy Protection: A Comparative Analysis” <https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2012/pp_201203/>

At the same time that candidates are subject to an unprecedented level of scrutiny, there is a general lack of awareness about the personal information captured on other individuals who may work for parties in different capacities before, during and after election campaigns. This includes regular employees, whose data might be protected under privacy legislation in BC, but not elsewhere although they might be afforded some privacy protections under provincial labour and human rights legislation. There are also a vast and fluctuating number of more temporary workers, consultants and volunteers, all of whom might be given access to large amounts of personal information about voters and their behavior, intentions and preferences.

Application 1: The Jack Ryan Scandal

Reporters Committee for Freedom of the Press 2012 (The Reporters Committee for Freedom of the Press was created in 1970 at a time when the nation’s news media faced a wave of government subpoenas asking reporters to name confidential sources.) “Public Figures, Private Records” <https://www.rcfp.org/journals/news-media-and-law-summer-2012/public-figures-private-reco/>

In 2004, Jack Ryan, a successful investment banker, was the Republican nominee in a close race for a U.S. Senate seat in Illinois, when two Chicago news media organizations successfully argued for the public disclosure of his previously sealed divorce records. Ryan opposed the records’ release and the ensuing revelation of a salacious sex scandal with his ex-wife derailed his campaign, paving the way for his opponent, a little-known Democrat from the Illinois State Senate, to win the November election by a landslide.

Impact: Violating Jack Ryan’s privacy implicated a third party and lost him the election regardless of his policies.

Affirmative Counter-Brief: Human Rights

In order to counter this negative case, you’ll have to turn the negative’s value arguments upside down. The right to privacy is based upon whether or not someone should have a reasonable expectation of privacy. If you can prove that there is no reasonable expectation of privacy in a political campaign, you can defeat the negative arguments without a problem. I’ve included some evidence to help out with that below.

More arguments in response to this negative case can be found in my affirmative human rights case.

No Reasonable Expectation of Privacy in Political Campaigns

Michael G. Doherty 2007 (Principal Lecturer at the University of Central Lancashire in the United Kingdom.) “Politicians As A Species Of ‘Public Figure’ And The Right To Privacy” <http://www.sbc.org.pl/Content/11963/doherty.pdf>

The Court does go on, in von Hannover (para. 64), to make some comment on the private information of public figures; ‘the public has a right to be informed, which is an essential right in a democratic society that, in certain special circumstances can even extend to aspects of the private life of public figures, particularly where politicians are concerned’. This links the right to be informed to the demands of a democratic society, indicates that politicians are a particular kind of public figure and confirms that public figure status does not automatically open up all aspects of private life. It says nothing, though, as to what are the ‘special circumstances’ justifying publication.

The key case illustrating the operation of these ‘special circumstances’ for a politician’s expectation of privacy is Editions Plon v France (2006) 42 EHRR 36 (see also Karhuvaara, as discussed above). The case concerned the publication of information concerning Francois Mitterrand’s state of health during the time he had been French president. The French government opposed publication but did recognise the importance of public debate on the right of the electorate to receive information about the physical and intellectual capacities of its leaders. The applicants argued that the book raised issues of general concern, in that a) that the President had assumed a duty of medical transparency and had committed a ‘State lie’, and b) it addressed a more general debate about the health of serving leaders (Editions Plon: para. 40). The Court held that the book was in the context of a wide-ranging debate on the public right to be informed about serious illness in the Head of State (Editions Plon: para. 44). Whilst there was clearly a fairly even balance between the public interest in freedom of expression and the privacy claim, as time passed the privacy interest which justified an interim injunction to protect the legitimate emotions of grief of the relatives had waned (Editions Plon: para. 53).

The facts of the case related to the Head of State, but using the ‘rough proportionality’ approach outlined above this could clearly apply with lesser force to, for example, the Interior Minister. It could, in theory and dependent on the circumstances, stretch to affecting the expectation of medical privacy for other powerful figures such as the governor of the national bank or the CEO of a major national corporation (e.g. Aerospatiale).

We can see Editions Plon as an example of legitimate public interest in private information flowing from inherent status as a political ‘paradigmatic’ public figure. This is where there is scope for differential treatment of politicians. The general ways in which public profile can have an impact on the expectation of privacy (outlined above in Section 2.B) are quite limited, but for politicians they have a broadened relevance.

Arguments from hypocrisy have a particular resonance when the person acting hypocritically is directing or influencing public policy. Phillipson and Fenwick (2000, p.676) use the example of a privately gay politician making conservative ‘family-values’ policy statements. Rudolf’s similar illustration of the clergyman campaigning against abortion (see above) shows that the argument from hypocrisy does have a special power when it relates to public role and influence, but also that this resonance is not limited to politicians, but extends to all those who have that role and influence.

Correcting outright lies will continue to provide a strong public interest in expression claims generally and for all public figures regardless of their political role. More difficult questions arise in relation to allegations of hypocrisy based not on express statements but on non-verbal image projection and management. Here we can argue that a married man having an affair and appearing with his family in public should not, other things being equal, justify publication where the individual is a public figure from the world of sports or entertainment. Where the person exercises some influence over public policy in any way that affects married and family life, though, their expectation of privacy, including hypocritical nonverbal representations of their life, ought to reduce in proportion to their influence. This can be linked to Rudolf’s (2006: p.537) approach to the issue of voluntary revelations. She argues that the legitimate public interest cannot be derived solely from public curiosity about a person. It can though flow directly from that person’s voluntary participation in public debate.

Even the derided notion of ‘involuntary role model’ seems to have some currency in relation to politicians. The Court of Appeal in McKennitt found that if the notion of expecting higher standards from certain people applied at all, it could only apply to certain professions. They gave the examples of headmasters or clergymen, and suggested that these could be joined by politicians (and ‘according to taste’, senior civil servants, surgeons and journalists).

The discussion above illustrated how inherent status as a politician, rather than as a general public figure, can affect the expectation of privacy in relation to image rights (Krone Verlag) and the latitude of the press to publish personal information (Karhuvaara). In some respects Editions Plon can be explained this way. The President had engaged his doctor in presenting a false image to the French people, but the justification for publication lay not only in correcting the false impression but also in the legitimate public interest in Mitterrand’s health flowing directly from his inherent status as the most powerful politician in the country.

So whilst it is a matter of degree rather than wholly separate treatment, the cases do disclose that identification as a politician has a legal impact on the privacy expectation to a different extent than for other public figures. The other conclusion that emerges from the analysis above is that it is the power and influence of politicians that often provides the justification for finding that their status impacts on their reasonable expectation of privacy. Power and influence are obviously not unique to politicians and we turn now to whether there are rationales for differential treatment founded more specifically on their political role.

Different Protections for Public Figures

Reporters Committee for Freedom of the Press 2012 (The Reporters Committee for Freedom of the Press was created in 1970 at a time when the nation’s news media faced a wave of government subpoenas asking reporters to name confidential sources.) “Public Figures, Private Records” <https://www.rcfp.org/journals/news-media-and-law-summer-2012/public-figures-private-reco/>

The federal Freedom of Information Act and like-minded state open records laws make all records of federal and state agencies presumptively available upon request. But their corresponding exemptions act as safeguards against the release of records that could compromise, among other issues such as national security, the privacy of an implicated individual. The federal Privacy Act of 1974 also governs the dissemination of personal identifiers located in administrative records, enabling federal executive branch agencies to withhold certain personal information about individuals without their permission.

But mounting public interest has suggested that transparency and ethics regulations monitoring candidates running for public office should perhaps take into account certain personal records in their capacity to affect official government business.

“No one has to be a public figure,” said Melanie Sloan, executive director of Citizens for Responsibility and Ethics in Washington (CREW), an organization that advocates for greater government accountability. “You give up a certain amount of privacy to be one.”

Follow the money

*(From the same source as above)*

In particular, information related to a political contender’s finances has always been of general public interest, but does not fall into the category of records that can be accessed under most transparency laws. But as the upcoming 2012 election nears, the secrecy that shrouds personal finances often draws attention to the still-unsolved quandary regarding the private records of public figures — an issue that is of importance to journalists, the aspiring politicians they cover and the citizens they hope to serve.

Recently, government transparency advocates and political opponents have called on Republican presidential candidate Mitt Romney to disclose more of his past income tax returns, in order to shed light on his offshore bank accounts, family trusts and working relationship with Bain Capital, a private equity firm that he founded.

But by releasing his 2010 returns and 2011 estimated taxes, “Governor Romney has dutifully and according to law filed all of his financial disclosure requirements,” said Romney aid Kevin Madden to host Bob Schieffer on CBS’ “Face the Nation” in July. “He’s gone above the law.”

Madden is right: under current government ethics statutes and Federal Election Commission regulations, Romney and other presidential candidates are under no legal obligation to release information related to their private tax history. The Internal Revenue Service protects the privacy of all citizens — including U.S. presidents — and is barred from releasing any taxpayer information to the public. But since the wave of political scandal that broke out in the 1970s, candidates running for public office have traditionally chosen to release their tax returns in an effort to appear transparent.

A *Vanity Fair* article published in August that exposed Romney’s offshore accounts in Bermuda and the Cayman Islands reported that it was actually the presidential candidate’s father who introduced the voluntary transparency precedent. George Romney released 12 years’ worth of his income tax returns just before the 1968 presidential election. According to the article’s author, British journalist and financial researcher Nicholas Shaxson, George Romney, then the governor of Michigan, said at the time that he released personal records that were up to a decade old because “one year could be a fluke, perhaps done for show.”

Only after securing his re-election did former President Nixon follow suit, releasing in 1973 copies of his wife’s and his joint federal income tax returns from 1969 to 1972, according to the Tax History Project, an organization that tracks the history of American taxation. The project’s online archive indicates that since then, presidential candidates have fluctuated in their level of voluntary financial transparency. Former presidential candidate Rick Santorum released four years of tax returns while Newt Gingrich, his opponent of the same political party, disclosed only his 2010 returns.

“I don’t think the public pays much attention to this stuff until there’s a controversy,” Sloan said.

Electing transparency

*(From the same source as above)*

While they do not have to release their income tax return information, presidential candidates are obligated to file public financial disclosure records. These releases are monitored by the U.S. Office of Government Ethics, an independent regulatory agency that exists to prevent conflicts of interest in the executive branch and maintain public confidence in the integrity of government decision-making, according to its website.

“The opportunities presented by government service come with responsibilities,” states the introduction to the online version of the ethics agency’s “Nominee and New Entrant” form that various political appointees from the executive, legislative and judicial branches must fill out. It requires filers to report assets and incomes for themselves, their spouses and their dependent children. “Transparency is a critical part of government ethics, and Congress has determined that the citizens should know their leaders’ financial interests,” according to the form.

The office was established to help with the enforcement of the Ethics in Government Act of 1978, a federal transparency statute that was passed in the aftermath of the Watergate scandal’s Saturday Night Massacre. Although a legislative act, the ethics law allows the Attorney General of the United States to investigate and bring charges against anyone who falsifies information in the reports through an executive mandate that has been criticized for muddling the traditional separation of powers.

Under the act, individuals who declare their candidacy for president must also submit public financial disclosure reports to the Federal Election Commission, which shares them with the Office of Government Ethics. The ethics agency then in turn reviews the disclosures’ veracity before posting the information online.

But loopholes do exist, according to Sloan’s watchdog organization, CREW, which sent a letter to the Office of Government Ethics in January, calling for an investigation into alleged discrepancies between Mitt Romney’s tax returns that were released on his own accord and financial disclosures that he filed with the Federal Election Commission. CREW requested that Romney be referred to the U.S. Department of Justice.

In an article published in April in *The Washington Post*, reporter Tom Hamburger noted that recently, the Office of Government and Ethics has occasionally allowed presidential candidates to delay revealing certain assets in investment accounts until after being elected to office if they are legally bound by a confidentiality agreement. According to *The Post*, that standard was set during the 2004 presidential election, when Democratic candidate John Kerry withheld some aspects of his wife’s finances, and likely explains Romney’s reported discrepancies, because Bain, the private equity firm he founded, often arranges such confidentiality agreements.

“If ethics and transparency are good for the goose, they are good for the gander,” said Sloan, according a press release issued by CREW regarding its questions about Romney’s financial disclosures.

In an interview, she said that overall, people running for public office do not enjoy the same legal protections on their personal lives as do private citizens.

Don’t like it? “Don’t run,” Sloan advised.

Works Cited

The American Heritage Dictionary “Right to Know” https://www.ahdictionary.com/word/search.html?q=right+to+know

Merriam-Webster Legal “Right of Privacy” https://www.merriam-webster.com/legal/right%20of%20privacy

Ashoka University 2018 (The Foundation is a society of like-minded individuals founded in 1979 to achieve the following objectives: To promote, support, encourage and undertake social science, statistical and scientific research pertaining to the print, electronic, film and other media with a view to enhancing and strengthening their freedom and independence; to uphold constitutional freedom of speech, expression and information; and to encourage freedom in society and enhance the quality of life through media and process of communication.) “The right to privacy vs. the right to know” http://asu.thehoot.org/free-speech/privacy/the-right-to-privacy-vs-the-right-to-know-10524

Forbes Press 2018 (Author David Herzig a Tax Principal with Ernst & Young LLP in the US-West Region.) “President Trump and Tax Return Privacy” https://www.forbes.com/sites/davidherzig/2018/04/05/president-trump-and-tax-return-privacy/#5caf16f595eb

Office of the Privacy Commissioner of Canada 2012 (Colin J. Bennett (BA, MA, University of Wales; Ph.D, University of Illinois, Urbana-Champaign) is a Professor of Political Science at the University of Victoria. His research has focused on the comparative analysis of surveillance technologies and privacy protection policies at the domestic and international levels. In addition to numerous scholarly and newspaper articles, he has published six books on privacy and numerous policy reports on privacy protection for Canadian and international agencies. Robin M. Bayley (BA, MPA, University of Victoria), President of Linden Consulting Inc., Privacy & Policy Advisors, has co-authored several chapters and reports on privacy regulation and methodologies such as privacy impact assessments. She helps organizations subject to Canadian privacy laws identify privacy risks and address them with policies and processes, and has assisted privacy regulators develop privacy compliance guides and tools for organizations and the public.) “Canadian Federal Political Parties and Personal Privacy Protection: A Comparative Analysis” https://www.priv.gc.ca/en/opc-actions-and-decisions/research/explore-privacy-research/2012/pp\_201203/

Michael G. Doherty 2007 (Principal Lecturer at the University of Central Lancashire in the United Kingdom.) “Politicians As A Species Of ‘Public Figure’ And The Right To Privacy” http://www.sbc.org.pl/Content/11963/doherty.pdf

Reporters Committee for Freedom of the Press 2012 (The Reporters Committee for Freedom of the Press was created in 1970 at a time when the nation’s news media faced a wave of government subpoenas asking reporters to name confidential sources.) “Public Figures, Private Records” https://www.rcfp.org/journals/news-media-and-law-summer-2012/public-figures-private-reco/