Negative: Justice

By Steven Errico

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

This case is a relatively straightforward balanced negative. The issues at play in these situations for voters are just too complicated to take a well-informed position on one extreme or the other. As the negative, the middle ground is yours. If the affirmative side is not clearly proven, you win the round.

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Negative: Justice

It’s easy to say that political candidates should be entirely transparent with us since we want to know who we’re voting for. It’s much more difficult, however, to imagine ourselves in the same position wanted to be entirely transparent. The fact is that these issues are not cut and dry. Candidates and elections makes for a complicated issue, and the right perspective and actions have to be based on context and take into account different circumstances. Join me in negating the resolution that: Resolved: In democratic elections, the public's right to know ought to be valued above a candidate's right to privacy.

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: Justice

Definition

Black’s Law Dictionary “Justice” <https://thelawdictionary.org/justice/>

Protecting rights and punishing wrongs using fairness. It is possible to have unjust laws, even with fair and proper administration of the law of the land as a way for all legal systems to uphold this ideal.

Reason to Prefer: Moral Obligation of Government

The duty of government is to enforce justice. It is the duty of the people to elect leaders who will enforce justice. We must therefore evaluate how each side of the resolution impacts the ability of both parties to do their respective jobs.

CONTENTION 1: Justice must be equal and balanced

Justice is a balance of rights

The New Internationalist 2015 (New Internationalist is a leading independent media organization dedicated to socially conscious journalism and publishing.) “Privacy Vs. Transparency” <https://newint.org/features/2015/01/01/privacy-transparency/>

So the question is: are these two rights – the right to transparency and the right to privacy – incompatible? Do we have to sacrifice one right to enforce the other? Unfortunately, many privacy and transparency activists think this is the case.

I suggest that these rights are completely compatible if you address the question of power. These rights do not have to be balanced against one another. Privacy protections must be inversely proportionate to power and, as Julian Assange says, transparency requirements should be directly proportionate to power.[1](https://newint.org/features/2015/01/01/privacy-transparency/#footnote-1)

In most privacy laws, the public interest is an exception to privacy. If public interest is being undermined, then an individual’s privacy can be infringed upon by the state, by researchers, by the media, and so on. In transparency law, if the privacy of an individual could be infringed, transparency would not be required unless it is in the public interest. In other words, the ‘public interest’ test allows us to use privacy law and transparency law to address power asymmetries rather than exacerbate them.

Application: Quebec Elections

International Association of Privacy Professionals 2019 (The International Association of Privacy Professionals (IAPP) is a resource for professionals who want to develop and advance their careers by helping their organizations successfully manage these risks and protect their data. In fact, we’re the world’s largest and most comprehensive global information privacy community.) “Élections Québec: Political Parties Should be Covered by Privacy Laws.” <https://iapp.org/news/a/elections-quebec-political-parties-should-be-covered-by-privacy-laws/>

Élections Québec released a report that recommends policies where parties should be covered by privacy legislation. The group suggests any data held by political parties should receive the same level of protection as the information held by public and private organizations in Quebec. Those privacy laws would also extend to municipal political parties, representatives and candidates for school elections. Élections Québec also wants The National Assembly to create a special committee to examine these issues. “Technologies are evolving, as are the challenges surrounding the protection of personal information,” the group states. “Laws must evolve to reflect these new realities. Our recommendations are meant to provide the basis for a broader reflection on the oversight of political parties with respect to the protection of personal information.”

CONTENTION 2: Disclosure without a standard is unjust

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: Medical Privacy

The Journal of Communications and the Law 1997 (The Journal of Communications and the Law provides articles in law topics, including first amendment and free speech expression.) “Political Candidates and Medical Privacy: How Much Does the Public Need to Know?” <https://www.questia.com/library/journal/1G1-20210643/political-candidates-and-medical-privacy-how-much>

There has been a great deal of controversy recently concerning the lack of privacy for public figures. This article focuses on a particular type of public figure, the political candidate, and examines the political candidate's great need for, but limited legal rights to, medical privacy. The controversy that took place during the 1996 presidential election over President Clinton's reluctance to match Bob Dole's release of his full medical records(1) highlights a dilemma that has confronted our electoral process for many years: What is the proper balance between a political candidate's right to privacy and the public's right to know? More specifically, how much of a candidate's medical history should the electorate expect the candidate to reveal? Our country currently has neither a policy nor clear expectations on medical disclosure for presidential candidates.

An examination of the health of our former presidents reveals that throughout this nation's history, many of our leaders were plagued by serious medical problems. Because the media was less aggressive in the past, some presidents were able to conceal their illnesses.(2) When President Eisenhower, however, suffered a serious heart attack in 1955 and disclosed all of the details to the public, the state of the president's health became a topic of national curiosity and concern. The American public began to feel that it had a right to know all such news. This expectation has caused health disclosure to become a distracting factor in political contests, inviting irrational prejudice and diverting attention from the true issues of the campaign.(3)

If the candidate has been discreet, his or her medical history will be protected by the rules of doctor-patient confidentiality. But a political candidate cannot hide behind legal rules. Because the candidate is asking for the public's trust he or she must provide the information that the public expects. The problem with medical disclosures is that there are no standards for what information should be revealed. Thus the public's expectations have been equated with the media's appetite for information, eliminating any limitations on disclosure and any medical privacy for the candidate. Expecting candidates to reveal their entire physical and mental health history can be prejudicial to the candidate, detrimental to our political system, and distracting from the true question of which candidate would be a better leader. The key question in setting limitations is: What is relevant to the candidate's potential performance in office?

Affirmative Counter-Brief: Justice

In order to counter this negative case, use the negative’s balanced approach against them. The negative will argue that a lot of complicated issues are at play here, and you can use this to argue that transparency is needed for that very reason. To that effect, several pieces of evidence are included below.

Further arguments to counter this case can be found in my affirmative “justice” case if you need more than what I’ve provided below.

Transparency outweighs when in conflict with public interest

National Conference of State Legislatures 2018 (Nicholas Birdsong is a policy associate with NCSL’s Center for Ethics in Government.) “Yes, No, Maybe So” <https://www.ncsl.org/bookstore/state-legislatures-magazine/yes-no-maybe-so-do-legislators-have-a-right-to-privacy.aspx>

Officials have challenged various financial disclosure requirements on privacy grounds for decades. Judges have considered claims that the laws unconstitutionally intrude into private affairs more than is justified by any public purpose. Critics have also argued that mandatory disclosure rules improperly restrict the right to seek or hold office when they exclude violators from the ballot. Some have further asserted that intrusive ethics laws discourage qualified candidates from running or serving in the legislature.

While courts have largely acknowledged that a right to privacy extends to legislators, that right is generally weighed against the state’s interest in a transparent government. Rules that exclude candidates from the ballot for withholding information have been found constitutional when they’re sufficiently tailored to achieve a legitimate state interest without unduly limiting the ability of candidates to run for office or for voters to be represented.

Although disclosure requirements generally have been upheld, overly broad statutes have been invalidated in a few cases. An ethics rule might be unconstitutional if the interest in privacy outweighs the government’s interest in exposing or minimizing possible conflicts of interest, such as when particularly intrusive requirements apply to family members, or if candidate-doctors are compelled to disclose sensitive patient information.

Some state constitutions have more robust privacy protections than others. Disclosure requirements may be permissible in one state but unconstitutional in another. However, no state can violate the privacy guarantees of the U.S. Constitution, which sets a sort of minimum threshold for how far these rules can go. As a result, financial disclosure laws must not violate either the federal Constitution or the constitution of the state in which the law exists.

Legislators have a right to privacy, but the constitutional protections only define the far boundaries of what is lawful. Within that wide range of what can be done, states take different approaches based on the demands of constituents and the cultures of individual states.

Many unknowns need to be revealed

The University of Notre Dame Law School 2014 (Lloyd Hitoshi Mayer joined the faculty as an associate professor of law in 2005 and became a full professor in 2011. He served as the Associate Dean for Academic Affairs from 2011 to 2015. He earned his A.B., with distinction and honors, from Stanford University in 1989 and his J.D. from Yale Law School in 1994. While at Yale, he was a John M. Olin Fellow in Law and Economics and served as business editor of the Yale Law and Policy Review and as an editor of the Yale Journal on Regulation. Following graduation, he clerked for the Honorable Lowell A. Reed, Jr., United States District Court for the Eastern District of Pennsylvania. He then joined Caplin & Drysdale in Washington, D.C., first as an associate and later as a member, where he concentrated on tax issues, particularly for nonprofit organizations. He teaches courses at Notre Dame Law School in not-for-profit organizations, business enterprise taxation, election law, and professional responsibility.) “Politics and the Public’s Right to Know” <https://scholarship.law.nd.edu/law_faculty_scholarship/959/>

In the United States it is taken for granted that members of the public should have access to information about their government. This access takes many forms, including the ability to obtain copies of government documents, the ability to attend meetings of government officials, and the related obligations of government officials to document their activities and to reveal certain otherwise private information about themselves. This access also is often limited by countervailing concerns, such as the privacy of individual citizens and national security. Nevertheless, the presumption both at the federal level and in every state is to provide such access. Now, however, a number of public debates raise the issue of whether this right to know should extend beyond government-government and private-government interactions to also reach private-private interactions that indirectly attempt to influence government officials. For example, should the right to know extend to public identification of "bundlers" who successfully encourage others to make substantial campaign contributions? Similarly, should the right to know require the public disclosure of all significant funders for election-related spending done independently of candidates and political parties? Should the right to know also extend to significant funders behind grassroots lobbying efforts? This Article explores these questions. Part I briefly describes the history of the public’s right to know in the United States. Part II explains and critiques the reasons commonly asserted to support the public’s right to know, considering whether they in fact support a right to know about government-related activities and actors on the part of the public, including when it comes to private-private political interactions. Finally, Part III considers the extent to which the public’s right to know should extend to certain specific types of private-private interactions that have political ramifications.

Disclosure Reduces Corruption

The Odyssey 2018 (Author Mitali Bidkar) “In A Democracy, The Public’s Right To Know Ought To Be Valued Above The Right To Privacy For Candidates” <https://www.ncsl.org/bookstore/state-legislatures-magazine/yes-no-maybe-so-do-legislators-have-a-right-to-privacy.aspx>

Candidates have a moral obligation to disclose to the public in order to reduce political corruption, allow voters to elect prepared candidates, and hold themselves accountable for their personal behavior in order to allow the public to make an informed voting decision. The requirement is *accountability.*Citizens should be able to hold public officials accountable for their decisions and policies, and therefore, citizens must have information that would enable them to judge how well officials are doing or are likely to do their job.

Secrecy breeds corruption

Earl Warren 1974 (From the American Bar Association Journal.) “Governmental Secrecy: Corruption’s Ally” [www.jstor.org/stable/25726734](http://www.jstor.org/stable/25726734)

When secrecy surrounds government and the activities of public servants, corruption has a breeding place. Secrecy prevents the citizenry from inspecting its government through the news media. The minimum amount of secrecy needed for the proper operation of government should be fixed by law, and no secrecy beyond that point should be countenanced.

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