Negative Generic: Privacy Doesn’t Matter

By Josiah Hemp

***Resolved: The United States federal government substantially reform the use of Artificial Intelligence technology***

This brief, along with its companion brief (Privacy Does Matter) addresses the critical issue of privacy. AI often affects privacy in many ways. If AFF is claiming “Protection of Privacy” as one of their Advantages this brief will be helpful against just about any case that makes such a claim. You can use this brief by itself, with other generic briefs (if you don’t have anything directly on-case) or pick cards from it and mix with your on-case NEG brief for a more powerful Negative strategy.

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Negative Generic: Privacy Doesn’t Matter

Privacy is a Manufactured Right – Not a basic human right from nature or the Constitution

The concept of the right to privacy doesn’t extend any further into the past than 1890. Rights which have to be “invented” are not human rights at all. And as we look globally, the concept of the right to privacy as a human right is not widespread.

The right to privacy is a recent invention

Prof. Dorothy J. Glancy, 1979 (Associate Prof. of Law, University of Santa Clara, Visiting Professor of Law, University of Arizona. J.D. Harvard, 1970.) Arizona Law Review “The Invention of the Right to Privacy,” <http://law.scu.edu/wp-content/uploads/Privacy.pdf> Page 3-4. (Accessed November 3, 2021).

“The right to privacy is, as a legal concept, a fairly recent invention. It dates back to an law review article published in December of 1890.”

Right to privacy not widespread

Dr. Rafael Capurro, 2005 (PhD in philosophy from Duesseldorf University “Privacy: An Intercultural Perspective.” Ethics and Information Technology (a peer-reviewed journal dedicated to advancing the dialogue between moral philosophy and the field of information and communication technology) 7, 37–47 (2005). <https://doi.org/10.1007/s10676-005-4407-4> (Accessed February 13, 2021)

“On the other hand, there is a much more trivial interpretation of "privacy," which indeed collides with the Japanese view: this is the idea of protecting the self as a bearer of individual preferences and beliefs as well as a representative of humanity. We could call this idea the individualistic foundation of privacy, in contrast with the Kantian version, a universalistic one, as discussed above. In  both cases we have to do with the concept of respect that plays an important role in everyday relations between human beings. This concept plays also an important role in the constitution of Japanese subjectivity and correspondingly in the notion of privacy. (17)  But what is important from a Japanese perspective is to protect the Seken rules  –  not the "privacy" of the individual with his/her subjective preferences and beliefs of his/her self as representing humanity. The key difference with regard to the Western conceptions of privacy seems to be that the self within Seken is something  that should be denied, not protected while in the West the self is the basis for critical thinking and moral action. When speaking about protection of privacy from a Japanese perspective we are not addressing the moral issue from a Seken but just from a Shakai perspective.”

Several Languages do not even have words for privacy

Dr. Cockcroft, and Dr. Rekker in 2016, (Cockroft, S. teaches and researches in Information Systems in the school of Management and Enterprise at USQ. PhD Otago), (Rekker, S. Saphira is a lecturer in Finance of the UQ Business School at the University of Queensland. Doctor of Philosophy, The University of Queensland; Master of Finance, Tilburg University) “The relationship between culture and information privacy policy.” Electron Markets (Fully peer reviewed, premiere international forum for advancing the understanding and practice of electronic markets and commerce.) 26, 55–72 (2016). <https://doi.org/10.1007/s12525-015-0195-9> <https://www.researchgate.net/publication/282499079_The_relationship_between_culture_and_information_privacy_policy> (Accessed November 3, 2021)

“Numerous studies have examined the concept of privacy across legal jurisdictions and cultures. For example, Ess (2005) outlines the similarities and differences between the conceptions of privacy, in particular in relation to data privacy protection laws, across Eastern and Western cultures. Although similarities are present, there is no universal consensus on the definition of privacy (Cannataci 2009). In fact, Newell (1995) suggests that several languages do not even have a definition for privacy, e.g. Dutch, Arabic, Japanese, Russian and the languages of many tribal societies.”

The right to privacy cannot be considered a fundamental right because it is culturally relative.

Dr. Judith DeCew 2018, (Ph.D. 1978, University of Massachusetts at Amherst. Senior Research Scholar; Professor Emerita, Department of Philosophy, Clark University. Has been a Visiting Professor of Philosophy at Wellesley College and a Visiting Professor of Philosophy at Harvard Summer School) "Privacy", The Stanford Encyclopedia of Philosophy (Spring 2018 Edition), Edward N. Zalta (ed.), <https://plato.stanford.edu/archives/spr2018/entries/privacy/>. June 11, 2018. (Accessed August 8, 2020.)

“Schoeman (1984) points out that the question of whether or not privacy is culturally relative can be interpreted in two ways. One question is whether privacy is deemed valuable to all peoples or whether its value is relative to cultural differences. A second question is whether or not there are any aspects of life that are inherently private and not just conventionally so. Most writers have come to agree that while almost all cultures appear to value privacy, cultures differ in their ways of seeking and obtaining privacy, and probably do differ in the level they value privacy (Westin, 1967; Rachels, 1975). Allen (1988) and Moore (2003) are especially sensitive to the ways obligations from different cultures affect perceptions of privacy. There has been far less agreement on the second question. Some argue that matters relating to one’s innermost self are inherently private, but characterizing this realm more succinctly and less vaguely has remained an elusive task. Thus it may well be that one of the difficulties in defining the realm of the private is that privacy is a notion that is strongly culturally relative, contingent on such factors as economics as well as technology available in a given cultural domain.”

A/T UN Declaration of Human Rights says privacy is a Human Right (HR)

UN also says VACATION is a HR

Article 24 of the Universal Declaration of Human Rights “Universal Declaration of Human Rights” United Nations. 10 December 1948. <https://www.un.org/en/universal-declaration-human-rights/> (Accessed June 15, 2021).

“Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”

UN Declaration of Human rights is not legally binding.

UN High Commissioner on Human Rights Office, No date. “Declaration on Human Rights Defenders.” <https://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Declaration.aspx#:~:text=The%20Declaration%20is%20not%2C%20in,on%20Civil%20and%20Political%20Rights> . (Accessed February 13, 2021.)

“1. Legal character

The Declaration is not, in itself, a legally binding instrument. However, it contains a series of principles and rights that are based on human rights standards enshrined in other international instruments that are legally binding – such as the International Covenant on Civil and Political Rights. Moreover, the Declaration was adopted by consensus by the General Assembly and therefore represents a very strong commitment by States to its implementation. States are increasingly considering adopting the Declaration as binding national legislation.”

PRIVACY DOESN’T MATTER

Most people don’t care about privacy as much as they claim to

Prof. Neil Sahota 2020 ( IBM Master Inventor, United Nations Artificial Intelligence Advisor, Professor at UC Irvine) 14 Oct 2020 “Privacy Is Dead And Most People Really Don’t Care” https://www.forbes.com/sites/neilsahota/2020/10/14/privacy-is-dead-and-most-people-really-dont-care/?sh=5fc1aa97b733

Have you read the terms and conditions to use Facebook? Your smart phone? [Most people have not](https://www.npr.org/2014/09/01/345044359/why-do-we-blindly-sign-terms-of-service-agreements), and probably with good reason. They’re hundreds, if not, thousands of pages long. In fact, even contract lawyers with thirty years of experience have struggled in trying to understand these agreements. Deep down, though, each of us knows that we’re signing away our privacy rights to use these platforms and devices. So why do we do it? We don’t truly value privacy as much as we like to believe we do.

What people value is “security,” not privacy. Strong belief in data privacy is dead

Prof. Neil Sahota 2020 ( IBM Master Inventor, United Nations Artificial Intelligence Advisor, Professor at UC Irvine) 14 Oct 2020 “Privacy Is Dead And Most People Really Don’t Care” https://www.forbes.com/sites/neilsahota/2020/10/14/privacy-is-dead-and-most-people-really-dont-care/?sh=5fc1aa97b733

We already live in a world where people are used to sharing everything online. You know those phone phishing scams like the fraudsters pretending to be the IRS? [Young millennials and Generation Z fall victim](https://www.vice.com/en/article/pkedxy/millennials-and-gen-z-get-scammed-more-than-their-grandparents-sorry) to them the most of any generation because they’re used to giving information away. People get important value from these platforms and devices and accept the trade offs for it. Data security is still paramount, but the strong belief for data privacy is pretty much dead.

Naïve to expect privacy any more, and people’s behavior proves they don’t really care

Identity Management Institute 2019 (global certification organization dedicated to identity governance, risk management, and compliance) (article is undated but mentions events in Sept 2019) “6 REASONS WHY DATA PRIVACY IS DEAD” <https://identitymanagementinstitute.org/6-reasons-why-data-privacy-is-dead/> (accessed 27 Nov 2021)

Decreasing difference between private and identifiable data is recognized at the governmental level, which proves that expecting privacy is naïve. In its report published years ago, the Federal Trade Commission raised concerns about “the diminishing distinction” between de-identified and personally identifiable information. Therefore, the “death of privacy” goes far beyond conspiracy theories. Based on our observations of the latest incidents and trends, consumer privacy appears dead no matter how much consumers expect it or organizations, industry experts, and regulators try to ensure the confidentiality of personal information and reassure consumers that all their personal data is in good hands. As we observe the latest trends and news, we have a hard time reconciling consumer expectation of privacy with consumer behavior as they post so many personal information on social media.

There’s nothing anyone can do about data privacy

WALL STREET JOURNAL 2018 (Christopher Mims, technology columnist) 6 May 2018 “Privacy Is Dead. Here’s What Comes Next” <https://www.wsj.com/articles/privacy-is-dead-heres-what-comes-next-1525608001> (accessed 27 Nov 2021)

Short of living in a remote hut while forsaking cellphones, the internet and credit cards, there is no longer any way that you, as an individual, can prevent marketers, governments or malicious actors from gathering and using comprehensive, personally identifying information about you.

Medical Privacy is not absolute

Prof. Rosalind Croucher 2011 (President, Australian Law Reform Commission; Professor of Law, Macquarie University. LLB from the University of Sydney; PhD from the University of New South Wales in the field of legal history. Former Acting Dean of Law at Sydney University (1997–1998).) “Australian Privacy Law & Practice – Key Recommendations for Health Information Privacy Reform” 28 September 2011 <https://www.alrc.gov.au/news/australian-privacy-law-practice-key-recommendations-for-health-information-privacy-reform/>. (accessed 27 Nov 2021)

“Privacy is a fundamental principle in health care. It is expressed in a range of ways, from duties of confidentiality through to legislative regimes. There are ethical and legal duties of confidentiality owed by health service providers—such as doctors, dentists, nurses, physiotherapists and pharmacists—that prevent the use of personal health information for a purpose that is inconsistent with the purpose for which the information was provided. A legal duty of confidentiality may arise in equity, at common law, or under contract. In addition, health service providers are often subject to confidentiality provisions in professional codes of conduct and, if they are employed in the public sector, may be subject to legislative secrecy provisions, that impose penalties—often criminal—if information is disclosed.

“Duties of confidentiality recognise the dignity and autonomy of the individual, as well as the public interest in fostering a relationship of trust between health service providers and health consumers to ensure both individual and public health outcomes. Such duties are not absolute and there are circumstances in which the law permits, and sometimes requires, the disclosure of confidential personal health information.”

Supreme Court says almost every government action interferes with personal privacy

*Justice Potter Stewart 1967 (Associate Justice, US Supreme Court) in 7-1 SCOTUS Majority Opinion. " U.S. Reports: Katz v. United States, 389 U.S. 347.” Library of Congress.* [*https://www.loc.gov/item/usrep389347/*](https://www.loc.gov/item/usrep389347/) *From footnote 5. Page 350. (Accessed November 2, 2021)*

"The First Amendment, for example, imposes limitations upon governmental abridgment of "freedom to associate and privacy in one's associations." NAACP v. Alabama, 357 U. S. 449, 462. The Third Amendment's prohibition against the unconsented peacetime quartering of soldiers protects another aspect of privacy from governmental intrusion. To some extent, the Fifth Amendment too "reflects the Constitution's concern for . . . ... .the right of each individual "to a private enclave where he may lead a private life."'" Tehan v. Shott, 382 U. S. 406, 416. Virtually every governmental action interferes with personal privacy to some degree. The question in each case is whether that interference violates a command of the United States Constitution."

**Analysis: Since everything the government does violates privacy, and only part of that is unconstitutional, there are very clearly some things that are private that the constitution does not and should not protect.**

WHEN YOU HAVE (AND DON’T HAVE) PRIVACY

Reasonable expectation test – The “Katz Test”

Justice Potter Stewart 1967 (Associate Justice, US Supreme Court) in 7-1 SCOTUS Majority Opinion. " U.S. Reports: Katz v. United States, 389 U.S. 347.” Library of Congress. <https://www.loc.gov/item/usrep389347/> From footnote 5. Page 350. (Accessed November 2, 2021)

 “As the Court's opinion states, "the Fourth Amendment protects people, not places." The question, however, is what protection it affords to those people. Generally, as here, the answer to that question requires reference to a "place." **My understanding of the rule that has emerged from prior decisions is that there is a twofold requirement, first that a person have exhibited an actual (subjective) expectation of privacy and, second, that the expectation be one that society is prepared to recognize as "reasonable."** Thus a man's home is, for most purposes, a place where he expects privacy, but objects, activities, or statements that he exposes to the "plain view" of outsiders are not "protected" because no intention to keep them to himself has been exhibited. On the other hand, conversations in the open would not be protected against being overheard, for the expectation of privacy under the circumstances would be unreasonable. Cf. Hester v. United States, supra.”

Responses to the Katz Test

Katz has no basis in the fourth amendment

Supreme Court Justice Clarence Thomas, 2018, in his dissenting opinion in Carpenter v. United States, 585 U.S. \_\_\_ (2018) Accessed from Justia. <https://supreme.justia.com/cases/federal/us/585/16-402/#tab-opinion-3919267> (Accessed October 23, 2021) (brackets in original)

Under the Katz test, a “search” occurs whenever “government officers violate a person’s ‘reasonable expectation of privacy.’ ” Jones, supra, at 406. The most glaring problem with this test is that it has “no plausible foundation in the text of the Fourth Amendment.” Carter, 525 U. S., at 97 (opinion of Scalia, J.). The Fourth Amendment, as relevant here, protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches.” By defining “search” to mean “any violation of a reasonable expectation of privacy,” the Katz test misconstrues virtually every one of these words.

Problems with the Katz test: “Reasonable expectations” are always changing

Louis Menard 2018, (has contributed to The New Yorker since 1991 and has been a staff writer since 2001. His book “The Metaphysical Club” was awarded the 2002 Pulitzer Prize. He is the Lee Simpkins Family Professor of Arts and Sciences and the Anne T. and Robert M. Bass Professor of English at Harvard University.) “Why Do We Care So Much About Privacy?” The New Yorker <https://www.newyorker.com/magazine/2018/06/18/why-do-we-care-so-much-about-privacy>. June 11, 2018. Accessed August 8, 2020.

“The other problem in Katz is the “reasonable expectation of privacy” standard. Again, the rule seems sensible. People assume that when they are talking inside a phone booth they are not being monitored. But who gets to claim an expectation of privacy and where is not self-evident. Can a person driving a rented car whose name is not on the agreement with the rental company? Last month, the Supreme Court, in a unanimous decision, said yes. And as Anthony Amsterdam, a law professor who argued, and won, the famous death-penalty case Furman v. Georgia, in 1972, has pointed out, people’s reasonable expectations are easily altered. If people are told by the government or by a service provider that their behavior is being monitored, the expectation of privacy instantly becomes unreasonable. Twenty years ago, for example, citizens could assume that they were not being photographed when they walked down the street. Today, there are thirty thousand closed-circuit surveillance cameras on the streets of Chicago alone.

If you consent, you no longer have a right to privacy

Samuel D. Warren and Louis D. Brandeis, 1890 (widely considered the creators of the Right to Privacy as a legal concept. Both were attorneys, Brandeis would become a SCOTUS Justice. "The Right to Privacy." Harvard Law Review 4, no. 5 (1890): 193-220. doi:10.2307/1321160 <https://www.jstor.org/stable/1321160?seq=1#metadata_info_tab_contents> (Accessed October 19, 2021)

“4. The right to privacy ceases upon the publication of the facts by the individual, or with his consent. This is but another application of the rule which has become familiar in the law of literary and artistic property. The cases there decided establish also what should be deemed a publication, - the important principle in this connection being that a private communication of circulation for a restricted purpose is not a publication within the meaning of the law.”

Consent is a well-recognized exception to the warrant requirement

Supreme Court of the United States, 1973, Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Accessed from the Library of Congress. <https://www.loc.gov/item/usrep412218/> (Accessed October 19, 2021) Ellipsis is in original. Legal Citations in this quote are not read. (ellipses in original)

“It is well settled under the Fourth and, Fourteenth Amendments that a search conducted, without a warrant issued upon probable cause is, "per se unreasonable . . . subject only to a few specifically established and well delineated exceptions; Katzv. United States, 389 U. S. 347, 357; Coolidge v. New Hampshire, -403 "U. S. 443, 454-455; Chambers v. Maroney, 399 U. S. 42, 51. It is equally well settled-that one of the specifically established exceptions to the requirements of -both a warrant and probable cause is a search that is conducted pursuant to consent. Davis v. United States, 328 U. S., 582, 593-594; Zap v. United States, 328 U. S. 624, 630. The constitutional question in the present case concerns the definition of "consent" in this Fourth and Fourteenth Amendment context.”

Privacy is Not a Constitutional Right

4th Amendment protects property, it doesn’t create a “right to privacy”

Clarence Thomas 2018 (associate justice, US Supreme Court) 22 June 2018 dissent in the case of CARPENTER v. UNITED STATES <https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf>

A purpose of exercising one’s Fourth Amendment rights might be the desire for privacy, but the individual’s motivation is not the right protected”); cf. United States v. Gonzalez-Lopez, 548 U. S. 140, 145 (2006) (rejecting “a line of reasoning that ‘abstracts from the right to its purposes, and then eliminates the right’”). As the majority opinion in Katz recognized, the Fourth Amendment “cannot be translated into a general constitutional ‘right to privacy,’” as its protections “often have nothing to do with privacy at all.” 389 U. S., at 350. Justice Harlan’s focus on privacy in his concurrence—an opinion that was issued between Griswold v. Connecticut, 381 U. S. 479 (1965), and Roe v. Wade, 410 U. S. 113 (1973)—reflects privacy’s status as the organizing constitutional idea of the 1960’s and 1970’s. The organizing constitutional idea of the founding era, by contrast, was property.

SOLVENCY: GOVERNMENT WILL VIOLATE PRIVACY ANYWAY

The government already has a massive surveillance system set up with or without smart speakers

Rod Dreher, 2020 (Rod Dreher is a senior editor at The American Conservative. A veteran of three decades of magazine and newspaper journalism, he has also written three New York Times bestsellers—Live Not By Lies, The Benedict Option, and The Little Way of Ruthie Leming—as well as Crunchy Cons and How Dante Can Save Your Life.) Live Not By Lies. Book. Published by Sentinel. Print. Pages 82-83.

“In 2013, Edward Snowden, the renegade National Security Agency analyst, revealed that the US federal government’s spying was vastly greater than previously known. In his 2019 memoir, *Permanent Record*, Snowden writes of learning that

The US government was developing the capacity of an eternal law-enforcement agency. At any time, the government could dig through the past communications of anyone it wanted to victimize in search of a crime (and everybody’s communications contain evidence of something). At any point, for all perpetuity, any new administration—any future rogue head of the NSA—could show up to work and, as easily as flicking a switch, instantly track everybody with a phone or computer, know who they were, where they were, what they were doing with whom, and what they had ever done in the past.

Snowden writes about a public speech that the Central Intelligence Agency’s chief technology officer, Gus Hunt, gave to a tech group in 2013 that caused barely a ripple. Only *The Huffington Post* covered it. In the speech, Hunt said, “It is really very nearly within our grasp to be able to compute on all human-generated information.” He added that after the CIA masters capturing that data, it intends to develop the capability of saving and analyzing it.”

Laws (like the AFF’s plan) are no defense against government surveillance

Rod Dreher, 2020 (Rod Dreher is a senior editor at The American Conservative. A veteran of three decades of magazine and newspaper journalism, he has also written three New York Times bestsellers.) Live Not By Lies. Book. Published by Sentinel. Print. Page 83.

“Understand what this means: your private digital life belongs to the State, and always will. For the time being, we have laws and practices that prevent the government from using that information against individuals, unless it suspects they are involved in terrorism, criminal activity, or espionage. But over and over, dissidents told me that the law is not a reliable refuge: if the government is determined to take you out, it will manufacture a crime from the data it has captured, or otherwise deploy it to destroy your reputation.

Backup evidence: NSA Has Access to Google and Yahoo’s clouds

Michael B Kelley, 2013 "The NSA Has Infiltrated The Clouds Of Both Yahoo And Google," October 30, 2013, Business Insider <https://www.businessinsider.com/nsa-infiltrated-both-yahoo-and-google-2013-10> (Accessed November 06, 2021)

The National Security Agency has secretly gained access to the main communications links connecting worldwide data centers of Yahoo and Google, Washington Post's Barton Gellman and Ashkan Soltani report. The Post, citing documents obtained from former NSA contractor Edward Snowden and interviews with knowledgeable officials, details a project called MUSCULAR that sends reams of customer data from hundreds of millions of user accounts, including those of Americans, to NSA servers.

Yahoo scans emails on behalf of US Intelligence

Joseph Menn, 2016 "Exclusive: Yahoo secretly scanned customer emails for U.S. intelligence - sources," Reuters October 04, 2016, <https://www.reuters.com/article/us-yahoo-nsa-exclusive-idUSKCN1241YT> (Accessed November 06, 2021)

SAN FRANCISCO (Reuters) - Yahoo Inc last year secretly built a custom software program to search all of its customers’ incoming emails for specific information provided by U.S. intelligence officials, according to people familiar with the matter. The company complied with a classified U.S. government demand, scanning hundreds of millions of Yahoo Mail accounts at the behest of the National Security Agency or FBI, said three former employees and a fourth person apprised of the events.

Yahoo’s response to Reuter’s Claims: they follow the law

Joseph Menn, 2016 "Exclusive: Yahoo secretly scanned customer emails for U.S. intelligence - sources," Reuters October 04, 2016, <https://www.reuters.com/article/us-yahoo-nsa-exclusive-idUSKCN1241YT> (Accessed November 06, 2021)

“Yahoo is a law abiding company, and complies with the laws of the United States,” the company said in a brief statement in response to Reuters questions about the demand. Yahoo declined any further comment.

Other companies likely involved as well

Joseph Menn, 2016 "Exclusive: Yahoo secretly scanned customer emails for U.S. intelligence - sources," Reuters October 04, 2016, <https://www.reuters.com/article/us-yahoo-nsa-exclusive-idUSKCN1241YT> (Accessed November 06, 2021)

Experts said it was likely that the NSA or FBI had approached other Internet companies with the same demand, since they evidently did not know what email accounts were being used by the target. The NSA usually makes requests for domestic surveillance through the FBI, so it is hard to know which agency is seeking the information.

COMPELLING INTEREST TEST – Lots of exceptions

This section responds to the claims in “GEN: PRIVACY DOES MATTER” that we should use the compelling interest test for privacy

Various compelling interests justify violating privacy

Lee E. Goodman (Chairman and Commissioner of the Federal Election Commission (FEC); previously served as legal counsel and policy advisor to the Governor of Virginia and Attorney General of Virginia) “The First Amendment Right to Political Privacy, Chapter 7 – In Need of Judicial Clarity” Privacy in Focus, 2019. <https://www.wiley.law/newsletter-Apr_2019_PIF-The-First-Amendment-Right-to-Political-Privacy-Chapter-7-In-Need-of-Judicial-Clarity>. (Accessed November 18, 2020.)

Early cases preceded the doctrinal development of First Amendment privacy and scrutiny tests, but laid early foundations for governmental interests that the Court has continued to draw upon. Among the governmental interests the Court has had occasion to consider are:
National Security – Beginning in the communist cases in the 1940s (before and after NAACP) courts balanced the government’s asserted need to protect the democracy from subversion against Judge Prettyman’s early iteration, in Barsky (1948), of the “private right.” Courts later distinguished communist cases from civil rights cases on the basis that national security was a more compelling governmental interest than southern states’ professed interest in enforcing their corporate compliance rules.
Preventing Corruption of Elected Officials – This interest is the sine qua non in the field of campaign finance restrictions. Burroughs, the earliest of cases (1934), recognized that disclosure of campaign contributions and expenditures was a mechanism that helped prevent corruption of politicians. Buckley (1976) was centrally focused on preventing corruption of elected officials.
Informational Interest – Although Buckley also acknowledged government’s interest in providing citizens information about who was funding the elected official’s ambitions – the informational interest implicitly was subordinate to the corruption prevention interest. Citizens had an interest in knowing who funded a politician’s campaign because the politician might be responsive to the funder and because the citizenry could hold the politician accountable. Likewise, Harriss (1954) recognized the interest legislators have in knowing who is paying to lobby them as a check against corruption and undue influence. Implicit in Harriss and Buckley was the ulterior use of the information to prevent corruption and hold politicians accountable.
Election Procedural Integrity – Doe (2010) and American Constitutional Law Foundation (1999) recognized the public’s interest in ensuring the integrity of a state-sponsored election, where the citizens engage in direct democracy, which included disclosure of the identity of those citizens who activate the election machinery.
Law Enforcement Tool – Another interest recently recognized by two courts of appeals is a law enforcement interest where the government claims it can glean internal information about a political association in order to enforce tax laws, nonprofit solicitation laws, or in one case securities fraud laws. The Ninth Circuit has ruled that a state may require a nonprofit, non-electoral organization to disclose its donors to the state not because the state needs the information but rather for the state’s mere convenience of having the information in a library in the rare event that the information might one day be useful.