The Inviolability of Privacy Belonging To a Citizen's Political Loyalties*

Democracy is that bourne from which no reform party returns—as yet. *Henry Demarest Lloyd***

By MARK D. ROSENBAUM***

The following article is an edited version of a brief submitted by the American Civil Liberties Union on behalf of three campaign organizations affiliated with the Socialist Workers' Party of California. Socialist Workers Etc. v. Brown, *53 Cal. App. 3d 879, — Cal. Rptr. — (Dec. 19, 1975). Currently on appeal before the Supreme Court of California, this case seeks to test the constitutionality of the "campaign disclosure" requirements of the California Political Reform Act of 1974, insofar as they discriminate against third parties and their candidates.*

Despite the United States Supreme Court decision Buckley v. Valeo, *44 U.S.L.W. 4127 (U.S. Jan. 30, 1976) which upheld in part the constitutionality of the Federal Election Campaign Act of 1974, including its disclosure provisions, the editors believe the issues presented herein have not been rendered moot for several reasons. First, the Supreme Court's decision in* Buckley *insists upon a narrow reading of the disclosure provisions so that a showing of "substantial harrassment" will waive the disclosure requirements of the act.* Id. *at 4149. Secondly, the SWP challenge is to the disclosure requirements of a California statute, and therefore the pertinent provisions of the*

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* Sweezy v. New Hampshire, 354 U.S. 234, 265 (Frankfurter, J. concurring).

** *The Populists at St. Louis,* REVIEW OF REVIEWS 278 (Sept. 1896). Reprinted in G. TINDALL, THE POPULIST READER 212 (1966).

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Constitution of the State of California must be interpreted and applied by the court in framing its decision. Indeed, Justice Mosk said in Wilson v. Superior Court, *13 Cal. 3rd 652, 532 P.2d 116, 119 Cal. Rptr. 468 (1975), the California Constitution contains, "A protective provision more definitive and inclusive than the First Amendment." Id. at 658. And finally, Buckley notwithstanding, the SWP is entitled to its day in court.*

Introduction

The public outcries which accompanied the revelations of corruption in government left lawmakers with no choice but to spearhead the enactment of so-called political reform legislation. With the eager support of well meaning citizens a spate of new laws was passed to check political campaign abuses. Yet when the clamor had abated, and when the purported reforms had been scrutinized, it became evident that the fundamental changes demanded were nowhere in sight. The very interests which had produced Watergate remained strong. For high public and corporate officials, the threat of genuine sanctions for unlawful activities was as illusory as ever. Control over the political process remained in the hands of the rich and the powerful.

At the same time, concern for the plight of minor parties and candidates, academic at best, was notably absent from the new legislation. Although it was disclosed that groups espousing dissident views and opposing the policies and practices of the major parties and their principal supporters had been subjected to vicious harassment by the government and private citizens, apparently there was no political capital to be gained from a public display of sensitivity to the plight of maverick factions in the community. Worse, the new statutes only increased the likelihood of future persecution. By requiring even the least influential adherents of unpopular parties to make public their names and addresses, ready-made enemies lists became available to anyone seeking them.

Thus, to protect the integrity and viability of political groups of the genre of the Socialist Workers Party, the American Civil Liberties Union (ACLU) determined that political reform legislation had to be challenged on First Amendment grounds—the rights of associational privacy and anonymity.

Background of the Litigation

The campaign committees in this consolidated action support and endorse candidates and policies of the Socialist Workers Party (SWP).

Historically, such activities have resulted in supporters, adherents, and financial contributors being subjected to official and private acts of harassment and reprisal once their identities were made known. Association with the SWP, even by individuals performing paid services without sharing the party's political views, has also spawned intimidation. Of necessity then, in order to participate within the political process, the SWP and its supporting organizations have been forced to rely upon anonymous contributions and to pledge faithfully that the identities of those proffering assistance and services would not be divulged.

The California Political Reform Act of 1974[1] effectively prohibits anonymous contributions to campaign funds of sums of fifty dollars or more by requiring public disclosure of the names and addresses of such contributors by the committees in receipt of the financial assistance.[2]

1. CAL. GOV'T CODE §§ 81000-91014 (West Supp. 1975).

2. CAL. GOV'T CODE §§ 84210(g), (h) (West Supp. 1975) requires *inter alia* that the mandatory campaign statements must divulge: "(g) The full name of each person from whom a contribution or contributions totaling fifty dollars ($50) or more has been received, together with his street address, occupation, and the name of his employer, if any, or the principal place of business if he is self-employed, the amount he contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he contributed." In the case of committees which are listed as contributors, the campaign statement shall also contain the number assigned to the committee by the Secretary of State or if no such number has been assigned, the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender and any person who is liable directly, indirectly or contingently on the loan, together with the date and amount of the loan and, if the loan has been repaid, the date of repayment and by whom paid. (h) The full name and street address of each person to whom an expenditure or expenditures totaling fifty dollars ($50) or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee: and in the case of the committees which are listed, the number assigned to each such committee by the Secretary of State or if no such number has been assigned, the full name and street address of the treasurer of the committee."

Sections 84301, 84302, and 84304 of Chapter 4 of Article 3 provide:

§ 84301. "No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes."

§ 84302. "No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer, if any, or his principal place of business if he is self-employed, and the full name and street address, occupation, and the name of employer, if any, or principal place of business if self-employed, of the other person. The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and

The act also effectively prohibits the anonymous provisions of services to political candidates or committees by requiring the public disclosure of the name and address of each individual to whom expenditures of fifty dollars or more have been made, in addition to the purpose for each expenditure.[3] In like manner, the Waxman-Dymally Act[4] proscribes anonymous contributions and expenditures for services of one hundred dollars or more.[5]

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the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor."

§ 84304. "No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling fifty dollars ($50) or more in a calendar year. An anonymous contribution of fifty dollars ($50) or more shall not be kept by the intended recipient but instead shall be promptly paid to the Secretary of State for deposit in the General Fund of the state."

Finally, Section 81008 states that: "Every report and statement filed pursuant to this title is a public record open for public inspection . . . ."

3. POLITICAL REFORM ACT OF 1974

§ 84303. "No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee, unless the agent or independent contractor files a campaign statement reporting the expenditure. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section.

4. CAL. ELEC. CODE §§ 11500-11614 (West Supp. 1975).

5. Relevant provisions of the WAXMAN-DYMALLY ACT mirror their counterparts in the POLITICAL REFORM ACT OF 1974 in most respects:

§ 11518(e). "The full name and city, state, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, of each person from whom a contribution or contributions totaling one hundred dollars ($100) or more has been received, together with the amount contributed by each such person and the cumulative amount contributed by each such person, provided, that in the case of committees which are listed as contributors, the campaign statement shall also contain the number assigned to the committee by the Secretary of State or if no such number has been assigned, the full name and street address of the treasurer of the committee."

§ 11518(f). "The full name and city, state, of each person to whom an expenditure or expenditures totaling one hundred dollars ($100) or more has been made, together with the amount of each separate expenditure to each such person during the period covered by the campaign statement and the cumulative amount paid to each such person; a brief description of the purpose for which the expenditure was made; the full name and city and state of the person providing the consideration for which any expenditure was made if different from the payee; and in the case of committees which are listed, the number assigned to each such committee by the Secretary of State or if no such number has been assigned, the full name and city, and state of the treasurer of the committee."

§ 11562. *Contributions made by agents*

"Any person who makes a contribution on behalf of another, or while acting as the intermediary or agent of another, shall disclose to the recipient of such contribution both

It is the Socialist Workers Party's position that the sections of the Political Reform Act and the Waxman-Dymally Act requiring public disclosure of contributors and suppliers of services seriously violate their constitutional rights of associational privacy and anonymity, placing into jeopardy the party's existence as a viable political force within our democratic system.

The Socialist Workers Party is not a newcomer to American elections. It has participated in electoral politics since its founding in 1938 and has nominated candidates for public office at all levels since 1948. In 1972 the SWP presidential candidate, Linda Jenness, received more than 96,000 votes. In that year Ms. Jenness appeared on the ballots of twenty-three states. A year later thirty-two candidates supported by the Socialist Workers Party ran in California statewide elections with varying degrees of success, and in the 1974 California general election the Socialist Workers Party endorsed a slate of sixteen candidates.

Parallel to active participation in the nation's electoral system the Socialist Workers Party and its supporting campaign committees are involved in educating the electorate to novel and creative modes of approaching important political issues. Indeed, though their campaigns are waged quite seriously, the SWP membership harbors no illusions as to the present possibilities of electing a large number of their candidates.[6] Thus elections become an important forum for the SWP to

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his or her own full name and city, state, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, and the full name of his or her employer, if any, or the principal place of business if he or she is self-employed, of such other person. The recipient of such a contribution shall include in his or her campaign statement the full name and city, state, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, of both the intermediary and contributor."

§ 11563. *Anonymous contributions*

"No person shall make an anonymous contribution or contributions to a candidate, committee, or any other person in a calendar year totaling one hundred dollars ($100) or more. An anonymous contribution of one hundred dollars ($100) or more shall not be used by the intended recipient but shall be promptly paid to the State Treasurer to be deposited in the General Fund of the state."

§ 11564. *Expenditures made by agents*

"Any expenditure, other than overhead or normal operating expenses, made by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee, shall be reported by the candidate or committee as if the expenditure were made directly by the candidate or committee, unless the agent or independent contractor files a campaign statement reporting the expenditure. The agent or independent contractor shall disclose to the candidate or committee all information required to be reported by this section."

6. Illustrative of this point are the burdensome requirements in California which keep numerous SWP candidates off the statewide ballot, though these candidates still

peacefully disseminate its views regarding significant foreign, national and local affairs.

It is noteworthy that many of these views, initially labeled as radical or revolutionary, have since become established as bedrock elements of the platforms of many candidates of both major political parties. Public calls for equality for blacks and women, for diplomatic recognition of communist nations, and for governmental assistance to the aged and the poor followed intensive, lengthy campaigns by the SWP on behalf of the same issues.

The SWP heritage of vigorous participation in general elections in order to elect candidates and to fuel the political marketplace of ideas continues today. The SWP campaign committees have organized primarily to support its nominees for election to federal, state, and local offices throughout California. In last April's Los Angeles primary, for instance, the SWP endorsed four candidates for the board of election, two for the board of trustees of the community college district, and two for the Los Angeles city council.

All of these candidates ran on the Socialist Workers Party platform, which seeks to replace capitalism in the United States with socialism. More specifically, the SWP program promotes certain political, social and economic goals.[7] Yet, in spite of the fact that all their activities are openly directed toward the mainstream of American poli-

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wage vigorous campaigns. The name of their 1974 gubernatorial candidate, Olga Rodriguez, for example, was not permitted to appear on the November, 1974 ballot.

7. "1. End U.S. Role as World Cop;
2. Fight High Prices;
3. Provide Jobs for all;
4. The Unconditional Right to Strike;
5. Expose the Energy Crisis;
6. End Racist Oppression;
7. End the Oppression of Women;
8. No Cutbacks in Education;
9. Improved Health Care, Housing and Mass Transportation;
10. Tax the Rich, Not the Workers;
11. Defend and Extend Democratic Rights;
12. Civil and Human Rights for Prisoners;
13. Civil and Human Rights for Gay People;
14. Halt Destruction of the Environment; and
15. Establishment of a Labor Party."

The Socialist Alternative for California, Nov. 1974 [hereinafter cited as The Socialist Alternative for California]. This pamphlet was issued as part of the November, 1974 electoral effort.

SWP committees are presently engaged in preparing a new platform for impending elections. This activity, however, had to be shelved temporarily despite its obvious importance because of the recent bombing of SWP Campaign Headquarters.

tics, individuals and their families associated and identified with the Socialist Workers Party in any respect, whether candidates, contributors, workers, members, supporters, or sympathizers, have been subjected to a systematic pattern of official and unofficial governmental and private harassment, surveillance, violence, interrogations, discrimination, deprivation of employment, and general denial of rights.

Indeed, the SWP would candidly confess that the most difficult hurdle which it must clear in lawsuits of this sort is to convince courts that the sworn declarations and affidavits of its members are in fact true. Mere written descriptions of the multitude of acts of intimidation and reprisal scarcely convey the terror and devastation visited on the personal and political lives of the nonprofessional SWP supporters and adherents, and persons furnishing needed services. The SWP committees genuinely fear that Watergate and its progeny have perhaps made credible claims of private and official exploits of sabotage and disruption, undertaken solely because of fear of the consequences of alien ideas. At the least, the profusion of reports of such activities may well have numbed public sensibilities to the horror which victims of such endeavors have experienced and continue to experience.

For example, based upon the recent revelation of official government documents it is now plain that as early as 1961 the F.B.I. had formulated and begun the implementation of a sweeping project designed to subdue and ultimately put an end to the SWP. As part of its "Counter-Intelligence Program" (COINTELPRO) a specific proposal entitled "SWP Disruption Program" was instituted. In a directive dated October 12, 1961 from then F.B.I. Director J. Edgar Hoover, the F.B.I. declared:

> The Socialist Workers Party (SWP) has, over the past several years, been openly espousing its line on a local and national basis through running candidates for public office and strongly directing and/or supporting such causes as Castro's Cuba and integration problems arising in the South. . . . The youth group of the SWP has also been operating on this basis in connection with SWP policies.
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> Offices receiving copies of this letter are participating in the Bureau's *Communist Party, USA, Counterintelligence Program.* It is felt that a disruption program along similar lines could be initiated against the SWP on a very selective basis. . . .
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> It is pointed out, however, that this program is not intended to be a "crash" program. Only carefully thought-out operations with the widest possible effect and benefit to the nation should be submitted. It may be desirable to expand the program after the effects have been evaluated [censored].

> Each office is, therefore, requested to carefully evaluate such a program and submit their [sic] views to the Bureau regarding initiating a SWP disruption program on a limited basis.[8]

Without complete access to F.B.I. files it is impossible to discern the full extent to which the SWP Disruption Program was actually carried out. But there is no question that COINTELPRO was activated by the F.B.I. against SWP committees.[9] As recently as October 9, 1969, virtually eight years after the inception of the program, internal memoranda were being circulated throughout the F.B.I. in order to determine the most efficient manner by which the program could be maintained, albeit under a different label.[10]

Examination of these memoranda reveals that the electoral activities of the Socialist Workers Party, protected under the Constitution, have been viewed by the government as the triggering mechanism for intensified harassment, surveillance and other "counter-intelligence" operations directed against the SWP. Once their identities were publicly disclosed, SWP members became focal objects of governmental attention. It is important to note that as early as 1962 it had been judicially determined that there existed:

> [n]o substantial evidence in the record that the Socialist Workers Party advocates or teaches by its "Declaration of Principles and Constitution" the violent or forceful overthrow of the government of the United States within the meaning of the test laid down by *Scales* and *Noto*. Furthermore, there is no substantial evidence showing that there is a party line within the organization which advocates or teaches such overthrow.[11]

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8. Record at 176, Socialist Workers 1974 California Campaign Comm. v. Brown, No. 45943 (Cal. 2d App. Dis., filed July 7, 1975) [hereinafter cited as SWP v. Brown]; Record at 162, Central-East Los Angeles Socialist Workers Party v. Pines, No. 46258 (Cal. 2d App. Dis., filed July 7, 1975) [hereinafter cited as C-E Los Angeles SWP Workers v. Pines].

9. The N.Y. Times, Mar. 19, 1975, at 1, col. 4, discussed recent relevations of the F.B.I. release of 3138 pages of internal documents showing that the F.B.I. had conducted "detailed investigations of virtually every officer or official the 2500 member party ever had" plus, in 573 pages, revealed "startling" disruption activities including attempts to remove a Boy Scoutmaster due to his wife's SWP activities.

10. Record at 177, SWP v. Brown; Record at 163, C-E Los Angeles SWP v. Pines.

11. Scythes v. Webb, 307 F.2d 905, 909 (7th Cir. 1962). *See also* Gordon v. Blount, 336 F. Supp. 1271 (D.D.C. 1971). The Evenhuis incident referred to within the *Gordon* opinion concerned Kenneth Ward Evenhuis, a resident of Los Angeles, who had been denied governmental employment because of his truthful assertion that the SWP did not advocate the overthrow of the government of the United States by force. This case is of particular relevance because it demonstrates how the government utilizes financial contribution to the SWP as one of its key indices of support leading to harassment and eventual discharge from employment. Central to the government's attack on Evenhuis were the following charges: (w) "On April 23, 1968, at an SWP meeting, you pledged $50 to the Spring SWP National Fund Drive of which amount you paid

Although the SWP has historically operated in the mainstream of American politics to espouse its admittedly dissident viewpoints, it continues to be victimized by COINTELPRO and its progeny. The F.B.I. itself has admitted 2,370 separate "operations" as part of its COINTELPRO exercises.[12] Assuming solely for the sake of argument the veracity of the number of operations acknowledged, it is apparent that many SWP followers will never know the true reasons for their loss of jobs or housing or the chaos inflicted on their lives as the result of their public support of protected SWP policies. Nor will they receive due compensation. Simple people must continue to bear the effects of open participation within the political process, or not participate at all.

Lately revealed government admissions concerning Dr. Morris Starsky, only disclosed under the compulsion of a lengthy Freedom of Information Act lawsuit,[13] are one manifestation of the results of public disclosure of alliance with the SWP. Dr. Starsky's account of his ordeal demonstrates the extraordinarily pervasive injuries he sustained from disclosure of this alliance.[14]

$20." (j) "At the SWP Executive Committee held on September 20, 1965, it was announced that you and your wife had donated $100 to the SWP, and that this money you and your wife had received as a wedding gift." *See* Record at 178-210, SWP v. Brown, *supra* note 8; Record at 164-92 C-E Los Angeles SWP v. Pines, *supra* note 8.

12. NEWSWEEK, Feb. 17, 1975, at 21.

13. Record at 139-43, SWP v. Brown, *supra* note 8.

14. Dr. Starsky, a Ph.D. from the University of Michigan, states in his affidavit: "From 1964 to 1970 I was an assistant professor of philosophy at Arizona State University in Tempe, Arizona. My record as a professional philosopher and as a teacher of philosophy has always been considered outstanding by my colleagues and my administrative superiors. . . .

"On election day of 1968 my name appeared on the ballot in Arizona as an elector pledged to the candidates of the Socialist Workers Party. Subsequently I became widely known in Arizona as a spokesman for the campaign platform and general political views of the Socialist Workers Party.

"In the summer of 1969 I heard for the first time that my position had been in jeopardy during that year; Douglas Warner, and the Dean of the College of Liberal Arts, George Peek, informed me that the Regents were pressuring the University to force me out of my position.

"By February of 1970, the Arizona state legislature went so far as to warn the Regents publicly that there would be no university appropriation if I weren't fired. An *ad hoc* faculty committee was appointed to investigate my conduct; it concluded that there were no grounds to fire me. Under pressure from the Regents, the President of the University nevertheless brought charges against me.

"While preparing to take legal action against the Regents, I began to look for another job.

"The Philosophy Department of Dennison University in Ohio was prepared to offer me a position, but the university administration there refused to hire me because of the events in Arizona.

After learning of the F.B.I.'s role in persecuting him, Dr. Starsky said:

> I did not know and only recently found out, when I obtained FBI documents from my file through the Freedom of Information Act,

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"In August I obtained a position for one year as a lecturer in Philosophy at San Diego State College of California. There was an informal understanding that if funds became available for a permanent position I would be given first consideration. On December 1, 1970, a vicious editorial was published in the *San Diego Union* demanding that the College get rid of me. At this point the administration became quite disturbed about my presence on campus. The Vice-President for Academic Affairs informed me that Chancellor Dumke had called and expressed his concern about how it happened that a "card carrying communist" had been hired at San Diego State College. The administration had already received a file on me from somewhere and I caught a glimpse of some of the material in it when it was made available to the Chair of Philosophy Department. What I saw were clippings from the *Militant* newspaper about my Arizona case.

"It was quite clear early in December, 1970, that the Philosophy department would not be permitted to re-hire me for the next year. In fact, I received a letter from the Dean informing me that there were no funds available to re-hire me for the following year before the end of December. This is the earliest date that anyone has ever been formally notified of his termination based on lack of funds in the history of the school.

"In July, 1971, I received a phone call from the Dean at Cal State Dominguez Hills in Gardena, California. I was informed that they had received three letters recommending me for the position of Chair of the Department of Philosophy from highly respected philosophers around the country. I was invited to the campus for an interview and I accepted the invitation.

"In August, 1971, I received an offer from Cal State Dominguez Hills and I accepted it immediately, I moved to Los Angeles, rented an apartment, obtained a key to the Philosophy department offices, completed the employment procedures and prepared a text book order for the upcoming semester.

"Nine days before the beginning of classes I received a letter from President Cain of Cal State Dominguez Hills stating that he had been informed of my termination of employment at Arizona State University and informing me that I would not be appointed to the faculty at Cal State Dominguez Hills.

"Once again I was forced to go to court to defend my rights. In addition I was now forced to seek non-teaching employment since there are usually no vacancies in philosophy once the school year begins.

"I had great difficulty finding a job. . . .

"I finally found a job in January of 1972 as a coding clerk for a marketing research firm. My starting salary was $2.75 and when I was laid off one year later my salary had climbed to $5.25 an hour.

"On December 27, 1972, the Federal District Court in Arizona ordered the Regents to reinstate me to the faculty at Arizona State University. An account of this decision and the related California suit was carried in the Los Angeles Times.

"While working at the marketing research firm I sought academic employment continuously without success. I could find no work of any kind from January, 1973, until late May, when I found a temporary coding clerk position at another marketing research firm. This position lasted until July and I was once again without employment until September when I found a job as a parking lot attendant. All of this time I was actively seeking academic employment in which I could utilize my training.

"The Regents appealed the reinstatement order to the Ninth Circuit and it is still pending. It is on the Court's calendar for October, 1974. The Dominguez Hills case

> that the appearance of my name as an elector for the SWP caused me to be targeted for COINTELPRO (counterintelligence) activities. Although the documents do not reveal all the things that the FBI did, as the documents put it, to *discredit* me, they do reveal that the local FBI—with approval from Washington—sent an anonymous letter falsely accusing me of improper conduct to every member of a faculty committee which was at the time hearing official university charges against me.[15]

The precise combination of governmental and private efforts directed at Dr. Starsky will probably never be known. Still, the conclusions of *The New York Times* cannot be gainsaid:

> Former Attorney General Saxbe has released evidence that the Federal Bureau of Investigation engaged in a deliberate campaign of defamation against a radical professor at Arizona State University. The clandestine efforts, which included the writing of anonymous letters to a faculty committee dealing with the teacher's professional future, continued for a period of two years, between 1968 and 1970. They appear to have had the personal approval of the late F.B.I. Director J. Edgar Hoover.
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> Dr. Morris Starsky, philosophy professor, anti-war activist and member of the Socialist Workers Party, who was the target of these attacks, was ultimately dismissed by the Arizona State Board of Regents, against the faculty committee's recommendations. Denials by a spokesman for the Regents of any link between the poison-pen letters and the firing are irrelevant to any appraisal of the F.B.I. action. What matters is that the bureau appears to have engaged in an illegal and despicable act of faceless persecution and slander.
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> Even as a single aberration, the acts against Professor Starsky would be intolerable. But beyond one professor's right to justice lurks the question of how many more dissident faculty members may have been similar targets. Dr. Starsky was, by all accounts, hardly a figure of great personal influence or national visibility. If the F.B.I. found it necessary to take "counter-intelligence" action against him, it is reasonable to suspect that his case may not have been unique. As Congress investigates the abuses of domestic intelligence, it has a special responsibility to seek full disclosure of, and adequate reparation for, any similar episodes of character assassination.[16]

Moreover, governmental forays against the SWP have not ceased.[17]

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has only recently been settled although I was ordered retroactively reinstated for the year 1971-1972 some time ago. I still have not been able to secure academic employment although I have solicited positions at over 150 colleges and universities and have obtained the services of a national placement bureau." *Id.* at 139-43.

15. Record at 54, C-E Los Angeles SWP v. Pines, *supra* note 8. For copies of F.B.I. memorandum characterizing COINTELPRO activities aimed at Dr. Starsky *see id.* at 56-69. *See also id.* at 54-55.

16. *Poison-Pen Police,* N.Y. Times, Feb. 5, 1975, at 36, col. 2.

17. In addition to the COINTELPRO program the special report of the Inter-

In December, 1974, F.B.I. agents visited the landlord of two Socialist Workers campaign supporters in Los Angeles and demanded to see personal records such as a marriage license and income tax files. Though attorneys for the SWP were successful in assuaging the landlord's fears to some extent, he remained too frightened to oppose F.B.I. demands that were neither compulsory nor proper.[18]

Instances of SWP harassment, intimidation and terrorizing are legion.[19] But all assaults endured have not been government inspired. Indeed, the most recent instance of harassment of SWP members, in many respects the most terrifying of all, was apparently the product of private individuals who resorted to guerilla tactics. On February 4, 1975, the SWP headquarters in east Los Angeles was bombed. A group calling itself the "National Socialist Liberation Front" claimed responsibility for the assault. Under the familiar "White Power" slogan, it wrecked havoc and threatened annihilation for the SWP.

Fortunately no one was injured in the bombing nor in the ensuing Nazi-inspired harassment of other SWP offices in the Los Angeles area, but this reign of terror effectively curtailed SWP activities. In her affidavit Matilde Zimmerman, an employee of the Westside Socialist Workers office, testified that she and her badly frightened co-workers reluctantly took measures to counteract the Nazi menace.[20]

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agency Committee on Intelligence (Ad Hoc) of June, 1970 (popularly known as the Huston Plan, because it was prepared in the main by the Presidential liaison on internal affairs, Tom Charles Huston) specifically included the Socialist Workers Party among the groups and organizations with which it was concerned. The plan endeavored to enlarge so-called intelligence gathering operations. It called for, *inter alia*, the intensification of electronic surveillance of "individuals and groups in the United States who pose a major threat to the internal security," the removal of restrictions on "legal mail covers," surreptitious entry against "urgent security targets," and other measures both legal and illegal.

The committee consisted of J. Edgar Hoover, Director of the F.B.I., Richard Helms, Director of the C.I.A. and Vice Admiral Noel Gayler, USN, Director, National Security Agency. Former President Nixon has acknowledged that he formally approved the plan on July 23, 1970. It has been asserted that the plan was rescinded five days later at the insistence of Mr. Hoover. However, substantial evidence, buttressed by the opinion of the Senate Select Committee on Presidential Campaign Activities (Ervin Committee) and the recent release by the House Judiciary Committee on Impeachment, chaired by Congressman Rodino, of much of the contents of the plan as part of the evidence used to formulate the second article of impeachment, indicates that no rescission ever took place. No formal memorandum of rescission was ever authored. It is known that at least two recommendations including one calling for the establishment of a committee to make operational the entire plan were in fact implemented. Sworn testimony by John Dean before the Ervin Committee confirms this fact. *See generally* L. CHESTER, C. MCCRYSTAL, S. ARIS & W. SHAWCROSS, WATERGATE, THE FULL INSIDE STORY (1973).

18. Record at 22, C-E Los Angeles SWP v. Pines, *supra* note 8.

19. *See generally* Record, at 89-171, SWP v. Brown, *supra* note 8.

20. "On Tuesday, February 4, 1975, at 8:00 p.m., I attended a campaign planning

Although devastating enough, the February bombing was not the first experienced by the SWP. In 1970 the Socialist Workers state

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meeting at the Central-East Los Angeles Socialist Workers office on Westlake Street in Los Angeles. The purpose of this meeting, attended by candidates, campaign directors, treasurers and others, was to plan out the activities of the Socialist Workers slate in the upcoming Los Angeles municipal elections.

"At 8:30 p.m. we were told that there was a bomb outside the door. We quickly proceeded down the back stairs. I was just outside the back door in the alley when the bomb exploded with tremendous force, blowing out the windows facing the alley.

"I did not know, at first, if anyone had been hurt or the extent of the damage. Both David Prince and Tom Scharret had been in the offices at the time the bomb went off. The office where Tom Scharret was working was next to where the bomb went off. It is a miracle that he survived. The desk where he had been was riddled with holes from flying shrapnel. The windows behind the desk were totally demolished as well as part of the wall. Luckily he ran into the adjacent office seconds before the bomb exploded.

. . . .

"I remained in the vicinity of the building for the next six or seven hours. Most of this time I was outside on the street. Many of the people who had been in the building were standing with me or close by. We could see all the destruction through the windows and watched as the LAPD bomb squad carted out box after box of debris.

"It was cold and rainy outside and most people were extremely shaken up by the blast. One person who started screaming when the bomb went off had to be taken home to relax. It was arranged that people who were afraid to go alone or were too shaken up to drive were given rides and people stayed with them.

"The next day I went to the Westside Socialist Workers office where I work. Sometime between 11:30 a.m. and 1:30 p.m., when everyone was out of the offices, a threatening note signed "Venice Provo" of the National Socialist Liberation Front," was taped to our door at 230 Broadway in Santa Monica. The note featured a picture of a drawn pistol and a swastika, with the words:

" 'POLITICAL TERROR. It's the only thing they understand.' I immediately called the Santa Monica Police. Officer Armando Lopez came, and I explained what had happened.

"On February 6, 1975, the Nazi Liberation Front claimed responsibility for the bombing in a telephone call to City News Service. They claimed their goal was 'not to harass the socialists but to exterminate them. WHITE POWER!'

"Later on the night of February 6th, there was a meeting of around 100 people to discuss how the Socialist Workers Campaign was going to respond to the bombing. A lot of discussion concerned the safety to supporters of the campaign and the rebuilding of the campaign headquarters so that the campaign could begin to function again. Many people expressed the feeling that the bombing had already had and would continue to have a serious curtailing effect on the campaign and that we would have to organize campaign activities in a new manner.

"Before this explosion occurred, people who were interested in the campaign were free to come up to the headquarters and get literature and sit down and talk to campaign supporters about the campaign. Now our headquarters are only open at certain hours and the doors are kept locked. Campaign supporters have to function as guards asking people who come to the headquarters what business they have, in fear of having someone place another bomb. In addition, different meetings that normally would have taken place in the headquarters had to be rescheduled at people's homes. The bombing has definitely had a curtailing effect on our campaign and our ability to reach people by having them come to our headquarters.

campaign headquarters in Los Angeles was raided by twelve men who terrorized the occupants and then set fire to the premises.[21] In 1969, a publicly advertised fund raising party for the SWP at a private home was invaded by three young men who drew pistols on the hosts and their guest contributors and then set fire to the house.[22] Nearly $5,000 in damage resulted; additionally, the insurance company which insured the home cancelled its policy, forcing the owners to pay substantially higher premiums with another company. Because of constant threats to their landlords and employers, accused of harboring "subversives," members of the SWP are frequently forced to find new living quarters and change jobs. Even where the consequences of their political beliefs have not been so dire, once they have been publicly identified, SWP supporters have found their housing, work, or school situations made increasingly unpleasant because of government or private censure.[23] SWP offices have received and continue to receive huge amounts of hate mail, crank calls and bomb threats.[24]

"On the night of the campaign meeting to discuss the response, Cathy Hinds received a call stating that there was a bomb scheduled to go off in 10 minutes. Everyone had to be evacuated from the building. Everyone went across the street and then were told to go home in groups of people so that no one could be singled out for attack.

"I am extremely concerned about the security of our offices in Santa Monica and Los Angeles. We have had to take expensive and time consuming measures to strengthen the doors and windows of our campaign headquarters, just in order to continue to function there and proceed with the activity of gathering support for our candidates for elected office.

"I am also concerned about the effect that the recent bombings and threats will have on the current Socialist Workers campaign for municipal office in Los Angeles. From my experience on the statewide campaign in 1974, which included soliciting financial contributions, I know that many individuals who would otherwise have contributed to our campaign, refused to do so when told that their addresses and places of employment would have to be disclosed." Record at 17-25, C-E Los Angeles SWP v. Pines, *supra* note 8.

21. Record at 124-34, SWP v. Brown, *supra* note 8; Record at 113-23, C-E Los Angeles SWP v. Pines, *supra* note 8.

22. Record at 138, SWP v. Brown, *supra* note 8; Record at 127, C-E Los Angeles SWP v. Pines, *supra* note 8.

23. *See generally* Record at 100, 111-18, 135-71, SWP v. Brown, *supra* note 8; Record at 17-34, 51-53, C-E Los Angeles SWP v. Pines, *supra* note 8.

24. *See generally* Record at 59-101, 117, SWP v. Brown, *supra* note 8; Record at 17-24, C-E Los Angeles SWP v. Pines, *supra* note 8. It should be noted that numerous specific examples of harassment of the SWP on a national scale have been omitted from this discussion in order to focus entirely upon California episodes for the sake of brevity. But there have been nationwide incidents of F.B.I. harassment directed against the SWP throughout the country. *See* Paton v. LaPrade, 382 F. Supp. 1118, 1122 (D.N.J. 1974). A subversive file was opened on a New Jersey high school student, Lori Paton, based entirely upon her letter to the SWP written as part of a class project, and the file was only destroyed upon issuance of a federal court order.

Finally, past experience with the Waxman-Dymally Act has also taught that compulsory disclosure requirements significantly impede and often destroy efforts made on behalf of SWP candidates. Sympathizers have privately told members of the SWP that they have refrained from joining the party or have withheld financial assistance because of fear of reprisals now that disclosure of their names is mandatory under law.[25] Supporters and contributors have explicitly requested assurances of anonymity as a precondition of their aid.[26] Those engaged in providing services have on occasion refused to perform work for the SWP out of fear of the aftermath once their identities became available to the public.

A number of these factors were analyzed by state chairperson Matilde Zimmerman in the *Central-East Los Angeles Socialist Worker Campaign Committee* case. She described her experiences in attempting to coordinate a meaningful campaign effort for a frequently unpopular slate of candidates, and at the same time coping with the strictures of the Waxman-Dymally Act:

> From my experience on the statewide campaign in 1974, which included soliciting financial contributions, I know that many individuals who would otherwise have contributed to our campaign, refused to do so when told that their addresses and places of employment would have to be disclosed.
>
> Under the WAXMAN-DYMALLY ACT, in effect in 1974, everyone who gave $100 or more, had to agree with their home addresses and places of business being made available not only to the CIA, FBI and police, but also to groups like the "Nazi Liberation Front." This was a tremendous obstacle to our raising the money necessary to effectively air our political views through the electoral process. During my travels around the state, virtually every candidate and campaign worker reported instances of potential supporters refusing to give money or otherwise participate actively in the campaign because of the fear of reprisals against themselves, their jobs or their families.
>
> In some cases, even businesses such as printers were reluctant to perform regular commercial services for us because of their fear of being associated in any way with the campaign.
>
> Under current law, reporting requirements are even stricter, with disclosure required of all contributions of $50 or more. This has a particularly damaging effect on campaigns such as ours, since the great majority of our total resources comes from small contributions in the $50 and $100 range. In 1974, the Socialist Workers Campaign received no contributions of $1000 or more, only two of $500 and about 45 of $100. Our total budget was only around $40,000. This compares to Brown and Flournoy who spent 3.5 million dollars on their campaigns.

25. Record at 111-14, SWP v. Brown, *supra* note 8.
26. Record at 89-96, C-E Los Angeles SWP v. Pines, *supra* note 8.

> Our supporters and potential contributors are afraid that they may suffer the same persecution others have suffered, often from official governmental agencies, if their support for the Socialist Workers Campaign is known. In San Francisco, a known paid-informer for the FBI approached a new campaign supporter and attempted to get information about the financial contributors to the Socialist Workers Campaign.[27]

Ms. Zimmerman's last comment regarding the interest of the F.B.I. in information about SWP contributions is especially ominous though consistent with recent revelations concerning F.B.I. activities with respect to SWP sympathizers.

Similarly, Olga Rodriguez, a plaintiff in the Socialist Workers 1974 California campaign committee case as the gubernatorial candidate, and an individual for whom a congressional committee maintained an extensive political activities file,[28] stated in the *Central-East* case that she learned during the course of her campaigning that "[o]n innumerable occasions people would decline to support or contribute to the Socialist Workers Campaign [because] [t]hey would not want their name on any . . . enemies list . . . . The Waxman-Dymally laws definitely has the effect of stopping people from contributing to my campaign."[29]

In the same suit, plaintiff Catherine E. Hinds, certified candidate for the board of trustees, drew upon her previous experience as a SWP campaign worker and asserted that the Political Reform Act of 1974 seriously "hamper[ed] [her] ability to raise funds."[30]

The net result of these statutory requirements is to imperil the very existence of the Socialist Workers campaign committees, and their candidates, as well as dissuade their supporters from venturing into the political arena. Because of the controversial nature of their activities, the past experience of the campaign organizations has been that compulsory disclosure of the full name and city, state, occupation and the name of the employer or principal place of business of individual contributors will cause present adherents to withdraw their allegiance and support, and will effectively deter other persons from joining, lending financial support, or otherwise providing aid to SWP campaign committees. The SWP committees are already operating on meager budgets, while trying to enlist as wide-based support as possible. The outcome of mandatory disclosure coupled with simultaneous restraint on anonymous contributions will mean financial decimation and curtailment of the most funda-

27. *Id.* at 21-22.
28. Record at 103-10, SWP v. Brown, *supra* note 8.
29. Record at 26, C-E Los Angeles SWP v. Pines, *supra* note 8.
30. *Id.* at 42.

mental constitutional rights to followers and prospective patrons of SWP campaigns and candidates. No fair interpretation of the facts permits any other conclusion. Indeed few cases in history have come before any court with such an unchallenged record of repeated and continuous instances of reprisals which have resulted from public knowledge of a person's identity and support for a third party and its views.[31]

This history of official and unofficial harassment early indicates that identified association with or support for the activities of the Socialist Workers Party, including electoral activity, is always a controversial matter, and is usually extremely hazardous to employment, social relationships and even personal safety.

Third Party Heritage—Anonymity for Survival

The importance to our democratic process of vigorous minority parties has long been regarded as paramount. In *Williams v. Rhodes*,[32] Justice Black observed:

> There is, of course, no reason why two parties should retain a permanent monopoly on the right to have people vote for or against them. Competition in ideas and governmental policies is at the core of our electoral process and of the First Amendment freedoms.[33]

The *Williams* Court's statement in respect to so-called third parties echoed the opinion of former Chief Justice Warren in *Sweezy v. New Hampshire*:[34]

> Equally manifest as a fundamental principle of a democratic society is political freedom of the individual. Our form of government is built on the premise that every citizen shall have the right to engage in political expression and association. This right was enshrined in the First Amendment of the Bill of Rights. Exercise of these basic freedoms in America has traditionally been through the medium of political associations. Any interference with the freedom of a party is simultaneously an interference with the freedom of its adherents. All political ideas cannot and should not be channeled into the programs of our two major parties. History has amply proved the virtue of political activity by minority, dissident groups, who innumerable times have been in the vanguard of democratic thought and whose programs were ultimately accepted. Mere unorthodoxy or dissent from the prevailing mores is not to be condemned. The absence of such voices would be a symptom of grave illness in our society.[35]

31. *Cf.* Pichler v. Jennings, 347 F. Supp. 1061, 1069 (S.D.N.Y. 1972).
32. 393 U.S. 23 (1968).
33. *Id.* at 32. *But see* Jenness v. Fortson, 403 U.S. 431, 434 (1970).
34. 354 U.S. 234 (1957).
35. *Id.* at 250-51; *cf.* Mills v. Alabama, 384 U.S. 214, 218-19 (1966).

The constitutional significance of third parties to our system of government has also been analyzed by political scientists. Howard Nash, Jr.,[36] has pointed out that third party nominees have included Presidents Martin Van Buren, Millard Fillmore and Theodore Roosevelt and Governors Robert LaFollette and Henry Wallace. William Hesseltine has argued[37] that although:

> [f]ew third parties have conducted national campaigns and a bare half-dozen can truthfully be said to have influenced national elections . . . by voicing grievances and by proposing panaceas, third parties have exerted significant influence upon the policies and programs of major parties. In a curiously anomalous manner, third parties have bolstered the traditional American two party system.[38]

The words of the former chief justice and the political scientists are particularly apt when applied to the Socialist Workers Party and its supporting campaign committees. As noted earlier, many of the SWP's early proposals—equal rights for black Americans and women, diplomatic recognition of communist nations, and governmental assistance to the aged and the poor—though once branded as radical and revolutionary, are now well-established aims of both major political parties. Even today many features of the SWP program[39] continue to find their way into the mainstream of American politics. At the very minimum, the SWP has fulfilled its historically crucial role of insuring that waters of political thought have not stagnated, that new and creative ideas will consistently be added to the political marketplace.

Such a legacy has not been without its heavy costs. It is an unfortunate but undisputed fact of American life that the price of espousing dissident views is far too often harassment and reprisals from a majority fearful of change. As the record in this case attests, there is no simple way to categorize the sources of this sort of conduct. Occasionally and terrifyingly, a government may structure an entire program of official action in an effort to mute the voices of a minority out of harmony with the predominant sound. To achieve conformity, the arsenal of the nation's highest domestic law enforcement agency has been marshalled against the SWP members and supporters through the F.B.I. COINTELPRO-Socialist Workers Party Disruption Program and its progeny.[40]

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36. H. NASH, THIRD PARTIES IN AMERICAN POLITICS (1959).

37. W. HESELTINE, THIRD PARTY MOVEMENTS IN THE UNITED STATES (1962).

38. *Id.* at 3.

39. *See* The Socialist Alternative for California, *supra* note 7.

40. The SWP filed a lawsuit to enjoin further F.B.I. harassment of their party, supporters and adherents. The case was however dismissed on procedural grounds. Social-

Additionally, those responsible for acts of intimidation do not always confine their energies to announced followers of the SWP. If the goal is to silence the party and its campaign committees, candidates and workers, then any persons who associate with the SWP are considered potential prey. This includes those who would otherwise supply necessary services to promote candidates and policies of the SWP, as, for example, the landlord of the SWP premises bombed this year.

It is therefore not surprising that minority parties have sought to air their political views anonymously. Nor is safety sought in the form of unsigned social criticism without substantial precedent. Over a decade ago in the *Yale Law Journal* it was pointed out:

> Anonymous writings have long played an important role in the expression of ideas. Anonymous pamphlets have been used in England since the beginning of printing. . . . During the early history of the United States prominent persons used anonymous pamphlets and the unsigned letter . . . to express their views on public issues. . . . At the time the first amendment was adopted, the device of anonymous political authorship was well known, and utilized by many of the founding fathers. The Federalist Papers of Hamilton, Madison, and Jay were published originally . . . under the name of "Publius." The Letters of Pacificus by Alexander Hamilton defending Washington's proclamation of neutrality . . . were published anonymously. Even Chief Justice Marshall, writing anonymously as "a friend to the Republic," vigorously defended certain Supreme Court decisions against attacks by Spencer Roane, also writing anonymously. Between 1789 and 1809 no fewer than six presidents, fifteen cabinet members, twenty senators, and thirty-four congressmen published political writings either unsigned or under pen names.[41]

First and Fourteenth Amendment Rights to Associational Privacy and Anonymity

The Supreme Court of the United States, consistent with the best

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ist Workers Party v. Attorney General of the United States, 375 F. Supp. 318 (S.D.N.Y. 1974). SWP's lawsuit is not intended as a panacea for every political ill. The gist of the SWP's complaint is that past and continued harassment and intimidation by the F.B.I. as well as by other individuals and groups make forced disclosure incompatible with First Amendment freedoms.

This lawsuit is confined of necessity to F.B.I. intimidation. The SWP urges that the First Amendment will not permit its guarantees and protections to be deferred. It is the government which must come forward and demonstrate that the SWP's grievances are no longer well founded and that disclosure need not now be feared. Even if the SWP's arguments were to be made totally baseless tomorrow, the First Amendment demands that they be at least afforded relief today.

41. Comment, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084, 1084-85 (1961). *See also* Talley v. California, 362 U.S. 60, 64 (1960); 4 A. BEVERIDGE, THE LIFE OF JOHN MARSHALL 313-19 (1919).

traditions of freedom of expression and belief, has taken care to guard against state sanctioned attempts to infringe the rights of associational privacy and anonymity of unpopular groups. In perhaps the seminal case, *NAACP v. Alabama*,[42] a unanimous court held that Alabama could not compel the NAACP to reveal to the state attorney general's office the names and addresses of its Alabama members and agents without violating the due process clause of the Fourteenth Amendment. At the outset Justice Harlan emphasized the constitutional importance of group association:

> Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between the freedoms of speech and assembly. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech.[43]

The Court next analyzed the harm which of necessity would be endured when unpopular groups are constrained to make their membership lists public:

> It is hardly a novel perception that compelled disclosure of affiliation with groups engaged in advocacy may constitute as effective a restraint on freedom of association as the forms of governmental action in the cases above were thought likely to produce upon the particular constitutional rights there involved. This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs. . . . Petitioner has made an uncontroverted showing that on past occasions revelation of the identity of its rank-and-file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility. Under these circumstances, we think it apparent that compelled disclosure of petitioner's Alabama membership is likely to affect adversely the ability of petitioner and its members to pursue their collective effort to foster beliefs which they admittedly have the right to advocate, in that it may induce members to withdraw from the Association and dissuade others from joining it because of fear of exposure of their beliefs shown through their associations and of the consequences of this exposure.[44]

There can be no doubt that the compelled disclosure of the names, addresses and business addresses of small contributors to the SWP

42. 357 U.S. 449 (1958).
43. *Id.* at 460.
44. *Id.* at 462-63.

campaign committees and candidates will often invite extremely serious reprisals, ultimately crippling or destroying its electoral activities. The legislative purpose of the campaign disclosure laws is to accentuate the flow of information regarding who is contributing goods and services to what candidates and parties. However, the effect of the statute is to hand the opposition to dissident political groups an "enemies list" of potential victims for acts of political and personal intimidation and terror.

By the same reasoning, those linked in the public eye by virtue of performing work for groups such as the SWP, though probably of different political persuasion, will finally determine that it is wiser to forfeit pecuniary gain than risk public scorn and harassment as the result of such association. For a political party in obvious need of a diverse set of services—printers, media and office suppliers—such a state of affairs would be disastrous.

Finally, the *NAACP* Court declared that its holding was not dependent upon the particular character of the harassment experienced, whether official or unofficial:

> It is not sufficient to answer, as the State does here, that whatever repressive effect compulsory disclosure of names of petitioner's members may have . . . follows not from *state* action but from *private* community pressures. The crucial factor is the interplay of governmental and private action, for it is only after the initial exertion of state power represented by the production order that private action takes hold.[45]

In *Bates v. Little Rock*,[46] Justice Stewart, writing for a unanimous Court, rebuffed an attempt by the city of Little Rock to compel disclosure of the local membership list of the NAACP and the identities of its financial contributors. After quoting extensively from *NAACP v. Alabama*, Justice Stewart directed attention to the fact "that compulsory disclosure of the membership lists . . . would work a significant interference with the freedom of association . . . ."[47]

The Supreme Court again had occasion to consider the First Amendment rights to associational privacy and anonymity in *Talley v. California*.[48] The Court there held a Los Angeles city ordinance to be void on its face because it forbade distribution, in any place under any circumstances, of any handbill which did not have printed thereon the name and address of the person who prepared, distributed or sponsored

45. *Id.* at 463.
46. 361 U.S. 516 (1960).
47. *Id.* at 523.
48. 362 U.S. 60 (1960).

it. Explaining the decisions in *NAACP* and *Bates* the Court once more stressed that "[t]he reason for those holdings was that identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance."[49] What is at stake, of course, here is far weightier than just "perfectly peaceful discussion," but rather the right to participate peacefully and openly in a meaningful fashion in the political process.

Justice Frankfurter, concurring in *Sweezy v. New Hampshire*,[50] underscored the constitutional barriers to be surmounted in an inquiry as required in the instant case:

> In the political realm, as in the academic, thought and action are presumptively immune from inquisition by political authority. It cannot require argument that inquiry would be barred to ascertain whether a citizen had voted for one or the other of the two major parties. . . . Until recently, no difference would have been entertained in regard to inquiries about a voter's affiliations with one of the various so-called third parties that have had their day, or longer, in our political history.[51]

In *Louisiana v. NAACP*,[52] the Supreme Court unanimously declared unconstitutional a Louisiana statute compelling disclosure of membership lists in certain nonprofit organizations. Reaffirming the Court's adherence to *Bates* and *NAACP v. Alabama*, the decision clearly held *without qualification* that where "disclosure of membership lists results in reprisals against and hostility to the members, *disclosure is not required.*"[53] Two years later in *Gibson v. Florida*[54] the Supreme Court once again afforded plenary constitutional protection to political and associational anonymity.

The Supreme Court's protection of the right of anonymity in controversial political associations continued in *Lamont v. Postmaster General.*[55] In *Lamont*, the petitioner challenged a post office regulation which compelled the addressee of "communist political propaganda" to request specifically its delivery, thus publicly identifying himself as a person desiring to receive such material. Declaring the regulation unconstitutional, the Court noted:

> [T]he addressee in order to receive his mail must request in writing that it be delivered. . . . This requirement is almost certain

49. *Id.* at 65.
50. 354 U.S. 234 (1957).
51. *Id.* at 266.
52. 366 U.S. 293 (1961).
53. *Id.* at 296 (emphasis added).
54. 372 U.S. 539 (1963).
55. 381 U.S. 301 (1965).

> to have a deterrent effect, especially as respects those who have senstive positions. Their livelihood may be dependent on a security clearance. Public officials, like school teachers who have no tenure, might think they would invite disaster if they read what the Federal Government says contains the seeds of treason. Apart from them, any addressee is likely to feel some inhibition in sending for literature which federal officials have condemned as "communist political propaganda." The regime of this Act is at war with the "uninhibited, robust, and wide-open" debate and discussion that are contemplated by the First Amendment.[56]

Until recently on the attorney general's list of subversive organizations, the SWP has historically been stigmatized by both the government and a number of citizens. But at the same time the Supreme Court has continued to shield organizations or individuals similar in posture to the SWP from like demands for disclosure.[57] It is important to recognize that the potential contributors to and suppliers of the SWP committees and its candidates are seldom public officials or even public figures. As a result they rarely have access to channels of effective communication and hence an available public form in which to counter false or scurrilous propaganda. In short these individuals are more vulnerable to injury and thus are in greater need of judicial protection.[58]

Indeed as the Supreme Court made clear in *New York Times Co. v. Sullivan*,[59] public officials, by virtue of their decision to voluntarily mount the public podium, must of necessity forfeit many of the protections normally afforded those in the private sector. It is a fundamental principle of our form of government that there be full and free discussion of the stewardship of public officials.[60]

But no such compelling need exists in regard to private citizens. Though it may well be the very linchpin of the entire process, their political activity is nevertheless qualitatively different from that of persons campaigning for election. In most instances they neither seek nor desire the public spotlight. Private citizens wish only to foster their political principles by joining and supporting others of similar persua-

56. *Id.* at 307. *See also* Heilberg v. Fixa, 236 F. Supp. 405 (N.D. Cal. 1964), *aff'd* 381 U.S. 301 (1965).

57. *See, e.g.*, DeGregory v. New Hamp., 383 U.S. 825 (1966); Watkins v. United States, 354 U.S. 178, 197-98 (1957); United States v. Rumely, 345 U.S. 41 (1953); Thomas v. Collins, 323 U.S. 516, 540 (1945); Martin v. Struthers, 319 U.S. 141 (1943) ("The authors of the First Amendment knew that novel and unconventional ideas might disturb the complacent, but they chose to encourage a freedom which they believed essential if vigorous enlightenment was ever to triumph over slothful ignorance."). *Id.* at 143. *See also* T. EMERSON, THE SYSTEM OF FREEDOM OF EXPRESSION 645 (1970).

58. *See* Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974).

59. 376 U.S. 254, 275 (1964).

60. Gertz v. Robert Welch, Inc., 418 U.S. 323, 343-45 (1974).

sion. Unlike candidates or officials, therefore, they should not be required to sacrifice significant degrees of their privacy to accomplish that end.

Further, it is beyond speculation that compelled disclosure of the identities of campaign contributors and their employers, or of those accepting campaign monies, will significantly discourage participation in the political process. One political scientist has observed:

> [t]he climate of politics in the United States exposes contributors to harassment by the press and exploitation by the opposition. Even persons with no need or intent to evade the law are led to give under false names . . . [S]olicitors report that persons whom they approach for contributions often say, in effect, "If you won't get my name in the papers and have a lot of reporters calling me up in the middle of the night, I will give you something." After being interviewed by a federal investigator in 1956, the donor of a legitimate, publicly reported campaign gift declared he would give no more if doing so were going to provoke investigations. . . .
>
> Those who advocate full disclosure argue that any gift unable to stand the light of day should not be made. Or, at least, persons making it should pay the penalty of public reaction. However this may be, in addition to the rascals, there are citizens who feel that contributing is like voting, a personal matter and nobody else's business.[61]

When the recipient of a prospective contribution is looked upon by the general public as an outcast group representing an unpopular social philosophy, and when it has been publicly acknowledged that the recipient has been targeted for reprisal activities at the highest levels of government as well as by private individuals and groups, its political support declines. Citizens who help finance third parties are particularly justified in feeling that their contributions or paid services are entirely a personal matter, and their names and addresses as well as those of their employers should not be a part of the public record. Those desirous of participating within the political process should not be compelled to undergo such risks.

The California Supreme Court, like the United States Supreme Court, has steadfastly protected the rights to anonymity and associational privacy in *every* context in which a minority group might conceivably suffer reprisal by virtue of the disclosure of the names and employers of its members or supporters. In *Huntley v. Public Utilities Commission*,[62] a unanimous court annulled an administrative decision upholding a

61. A. HEARD, THE COSTS OF DEMOCRACY 360 (1960).
62. 69 Cal. 2d 67, 442 P.2d 685, 69 Cal. Rptr. 605 (1968).
63. *Id.* at 73, 442 P.2d at 685, 69 Cal. Rptr. at 609.

requirement of the Public Utilities Commission that recorded message subscribers include in the recording the name of the individual or organization responsible for the message and the address at which the service was rendered. The purpose of this requirement was to deter frequent abusive or libelous messages aimed at certain individuals and organizations which, it was charged, were encouraged by permissive anonymity. The *Huntley* court balanced this interest against the interest in safeguarding minority views. It was particularly sensitive to the delicate position a minority group occupies within the political process:

> The majority may freely assert its beliefs and is secured freedom of speech by the very fact of its mathematical majority. It is the minority, whether of the left or the right, which must overcome accepted views. To succeed, the minority must persuade others until, as is the nature of a democratic society, it hopefully attains the status of the majority. In doing so, the minority will frequently be subjected to criticism and debate, a necessary adjunct to the ascertainment of truth. But, depending upon the popularity of the minority position and the inviolability of the majority beliefs, the proponents of change may also be subjected to harassment, threats and violence.
>
> In this context, as correctly contended by petitioners, anonymity may be an indispensable prerequisite to speech. When the content of speech may lead to harassment or reprisal, fear or apprehension may deter expression in the first instance. History is replete with unpopular ideas which now form the foundation of modern society's mores and laws, but which could only be asserted anonymously when first expressed.[63]

Guided by the same principles the California Supreme Court in *Carmel-by-the-Sea v. Young*[64] struck down a state financial disclosure law requiring that every public officer and each candidate for state or local office file a statement as to the nature of his or her investments in excess of $10,000, as well as those of his or her spouse and their children, as a constitutional infringement upon the public officer's or candidate's right of privacy.[65]

It is true that on occasion the court has upheld the constitutionality of certain disclosure laws. However, in each instance the court has been exceedingly careful to be certain that its decision did not impair either the rights of minority organizations or sweep more broadly than was absolutely required.

Justice Peters, author of the *Huntley* opinion, turned back a constitutional challenge to a provision of the California Election Code making

64. 2 Cal. 3d 259; 466 P.2d 225, 85 Cal. Rptr. 1 (1970).

65. *See also* Burrows v. Superior Court, 13 Cal. 3d 238, 529 P.2d 590, 118 Cal. Rptr. 166 (1974).

it a misdemeanor to write or distribute anonymously publications "designed to injure or defeat any candidate for nomination or election to any public office by reflecting upon his personal character or political action."[66] Albeit a narrow decision; the law in question applied only to attacks on candidates, not to writings which merely communicate opinions on issues,[67] and there was no indication that any substantial inhibition of expression would follow.[68] Still, most significantly this case, *Canon v. Justice Court*, made explicit reference to the *Bates* and *NAACP* cases:

> In *Bates* it was found, "On this record it sufficiently appears that compulsory disclosure . . . would work a significant interference. . . ." The same was true in *N.A.A.C.P. v. Alabama* . . . . There is no showing that any circumstances exist in California which would indicate a substantial likelihood of a significant inhibitory effect upon valid expression resulting from the disclosure requirement.[69]

A 1973 act not wholly unlike that found constitutionally infirm in *Carmel-By-The-Sea*,[70] was upheld against attack in *County of Nevada v. MacMillen*.[71] In this case the legislation was carefully tailored to conform to the guidelines set forth in *Carmel*. The California Supreme Court began by saying that it was reserving analysis of specific problems possibly arising from subsequent interpretation of particular provisions of the act.[72] Nevertheless, the legislation as a whole was not deemed unconstitutional because it appeared:

> to accomplish its legitimate aims in a less intrusive, and considerably more limited, fashion. . . . The act's "prohibition" provisions are keyed at enjoining only "substantial" conflicts of interest . . . and relate only to public agency action or decision having a "material economic effect" . . . upon the official's economic interests. Thus, the act does not forbid an official to participate in agency matters which could have only an insignificant, de minimis economic effect upon his interests. More importantly, the act's "dis-

66. Canon v. Justice Court, 61 Cal. 2d 446; 393 P.2d 428; 39 Cal. Rptr. 228 (1964). Not every court which has considered similar statutes has so held. *See, e.g.*, Zwickler v. Koota, 290 F. Supp. 244 (E.D.N.Y. 1968), *rev'd as moot sub nom.* Golden v. Zwickler, 394 U.S. 103 (1969); People v. Duryea, 351 N.Y.S.2d 978, 76 Misc. 2d 948, *aff'd* 354 N.Y.S.2d 129 (1974).

67. Canon v. Justice Court, 61 Cal. 2d 446, 459, 393 P.2d 428, 436, 39 Cal. Rptr. 228, 236 (1964).

68. *Id.* at 453, 393 P.2d at 436, 39 Cal. Rptr. at 236.

69. *Id.* at 455, 393 P.2d at 433, 39 Cal. Rptr. at 233 (citations omitted). *See also* Eisen v. Regents of Univ. of Calif., 269 Cal. App. 2d 696, 701-03, 75 Cal. Rptr. 45, 49 (1969); Huntley v. Public Utilities Comm., 69 Cal. 2d 67, 442 P.2d 685, 69 Cal. Rptr. 605 (1968).

70. 2 Cal. 3d 259, 466 P.2d 255 (1970), 85 Cal. Rptr. 1.

71. 11 Cal. 3d 662, 522 P.2d 1345, 114 Cal. Rptr. 345 (1974).

72. *Id.* at 674, 522 P.2d at 1345, 114 Cal. Rptr. at 351.

> closure" provisions are aimed at requiring disclosure only if the official's interests could be "affected materially" by his public service. . . . Moreover, unlike the 1969 act, the 1973 act does not require disclosure of the actual extent of the official's assets and interests, but only whether the value of his investment or real property interest exceeds $10,000. . . . Finally, the disclosure requirements of the 1973 act apply only to certain specified high-level officials and not to every public official throughout the state.[73]

The *MacMillen* and *Carmel* decisions are important because they both concern public officials. The narrow abridgement of First Amendment rights, permitted only after extensive balancing, did not encroach upon the rights of private citizens. The requirement of some public disclosure of potential conflicts of interest only were applied to those already willingly committed to being publicly scrutinized. Individual citizens contributing relatively small sums of money to candidates and parties to whose positions they subscribe, and, more dramatically, individuals and businesses furnishing services to those candidates and parties are both in qualitatively different classes.

Numerous cases, federal and state, echo this position. For example in *American Civil Liberties Union v. Jennings*,[74] Title III of the Federal Election Campaign Act of 1971[75] was alleged to infringe upon the First Amendment. Entitled "Disclosure of Federal Campaign Funds", Title III "establish[ed] an elaborate system of record keeping and public disclosure of campaign contributions and expenditures. . . . "[76] Relying mainly upon *United States v. Rumely*,[77] the court determined that the language of the sections in question did not apply to the plaintiff organization, and thus avoided ruling on the constitutional issue presented. Nevertheless, Judge Parker reaffirmed the policies in *NAACP* and *Bates*, and expressed concern that controversial organizations would be "confronted with serious abridgements of constitutionally protected endeavors" were the act to be applied to them.[78] Similar sentiments were voiced in *United States v. National Committee for Impeachment*[79] and *Pichler v. Jennings*.[80] No precedent established in either state or federal court has required a political candidate belonging to a splinter party such as the SWP to disclose information as compre-

73. *Id.* at 671-72, 522 P.2d at 1352, 114 Cal. Rptr. at 350.
74. 366 F. Supp. 1041 (D.D.C. 1973).
75. Pub. L. No. 92-225, 86 STAT. 3.
76. American Civil Liberties Union v. Jennings, 366 F. Supp. 1041, 1054 (D.D.C. 1973).
77. 345 U.S. 41, 45 (1953).
78. 366 F. Supp. at 1056.
79. 469 F.2d 1135, 1140 (2d Cir. 1972).
80. 347 F. Supp. 1061, 1069 (S.D.N.Y. 1972).

hensive as that required of the SWP under the 1974 Political Reform Act.[81]

A three-judge panel consisting of Circuit Judge [now Justice] Blackmun, and Judges Henley and Harris enjoined the enforcement of a subpoena by a local district attorney of the bank account of the Arkansas Republican party as part of an investigation of election law violations in *Pollard v. Roberts*.[82] The effect of the inquiry would have been to reveal individual contributions to the minority Republican party throughout the state and to place the appellants in a predicament resembling the one now faced by the SWP committees. The court reasoned:

> Apart from fear of actual reprisal, many people doubtless would prefer not to have their political party affiliations and their campaign contributions disclosed publicly or subjected to the possibility of disclosure merely because an officer or agency clothed with investigatory powers may suspect that some members of their party may have violated the law. Disclosure or threat of disclosure well may tend to discourage both membership and contributions thus producing financial and political injury to the party affected.
>
> Whether we like it or not, political parties have to have money and members, and anything which deters people from party support is detrimental to the party involved, regardless of what party it is. And the potential detriment to be apprehended from an unjustified disclosure of member and contributor identities would appear to bear particularly heavily upon a party, like the Republican Party in Arkansas, which for many years was and still is a minority party as far as numbers of regular adherents are concerned, and which in only recent years has been able to enter upon what appears to be a period of rejuvenation and growth.

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81. United States v. Finance Comm., 507 F.2d 1194 (D.C. Cir. 1974) and Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974) are not inapposite.

In *Stoner*, the plaintiff contended that he should not be compelled to make disclosure because he was a "very controversial candidate." 379 F. Supp. at 710. Plainly the degree to which a candidate is "controversial" is not the proper test. The appropriate standard centers on actual harassment, suffered in the past and likely to continue as the result of compelled disclosure. Merely being "controversial" hardly satisfies this standard.

Finance Committee supports the proposition that claims to nondisclosure cannot be automatically foreclosed, but must be sensitively weighted pursuant to a traditional First Amendment balancing analysis. Quoting from California Bankers Assn. v. Shultz, 416 U.S. 21, 56-57 (1974), the Court reaffirmed the holdings in NAACP v. Alabama, 357 U.S. 449 (1958) and its progeny and stressed the necessity of the court being presented with a concrete fact situation from which it could compare competing interests. It is especially noteworthy that the Court did not state that the interests purportedly forwarded by the statute attacked constitutionally could survive all challenges in differing factual contexts. 507 F.2d at 1200.

82. 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968).

> Along with the injury which unjustified disclosures of the type here involved may inflict upon the affected party as a political organization, it is recognized that such disclosures injure individual party members and contributors as well. For various reasons, including fear of reprisal or harassment, the possibility of disclosure of their party affiliations and contributions, if any, tends to inhibit citizens from exercising their right to participate meaningfully in American political life.
>
> . . . .
>
> . . . To the extent that a public agency or officer unreasonably inhibits or discourages the exercise by individuals of their right to associate with others of the same political persuasion in the advocacy of principles and candidates of which and of whom they approve, and to support those principles and candidates with their money if they choose to do so, that agency or officer violates private rights protected by the First Amendment.[83]

In *United States Servicemen's Fund v. Eastland*,[84] Senior Circuit Judge Tuttle ruled that the First Amendment prohibited the House Internal Security Committee from subpoenaing the bank records of controversial political organizations in order to learn the identities of financial contributors.

Recent decisions in the federal courts,[85] discussed above, dispel whatever doubts may exist regarding the role of the First Amendment in protecting nondisclosure. Each of these cases placed into controversy the issue of whether the identities of contributors to a political committee or candidate could be publicly disclosed consonant with the guarantees of the Constitution. In none of the decisions was it even intimated that under different factual circumstances, a First Amendment argument on behalf of the plaintiffs would not only have been proper but would have prevailed, following precedent established in *NAACP*, *Bates* and *Talley*.

Contribution to a political campaign, in an age where, candidly, money talks, is a most significant medium of communication. Indeed as the *Pollard* Court observed, it may be the only purposeful means besides voting by which the average citizen can take part in the political process. In an era in which frankly "money talks" financial gifts both

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83. *Id.* at 258.

84. 488 F.2d 1252 (D.C. Cir. 1973), *rev'd on other grounds*, 421 U.S. 491 (1975).

85. United States v. Finance Comm., 507 F.2d 1194 (D.C. Cir. 1974); United States Servicemen's Fund v. Eastland, 488 F.2d 1252 (D.C. Cir. 1973), *rev'd on other grounds*, 421 U.S. 491 (1975); United States v. National Comm. for Impeachment, 469 F.2d 1135 (2d Cir. 1972); Stoner v. Fortson, 379 F. Supp. 704 (N.D. Ga. 1974); Pichler v. Jennings, 347 F. Supp. 1061 (S.D.N.Y. 1972); Pollard v. Roberts, 283 F. Supp. 248 (E.D. Ark.), *aff'd per curiam*, 393 U.S. 14 (1968).

make possible the ventilating of political views in the public marketplace and, more importantly, represent an unmistakable statement of an individual's sentiments and beliefs. Like the placard and the handbill, a citizen's monetary contribution proclaims his or her personal position and marks an unmistakable effort to persuade or to alter the views of others, consistent with the ultimate function of free speech. A unanimous California Supreme Court in *Burrows v. Superior Court*[86] reiterated the concurring opinion of Justices Powell and Blackmun in *California Bankers Assn. v. Shultz*:[87]

> In their full reach, the reports apparently authorized by the open-ended language of the Act [Bank Secrecy Act of 1970] touch upon intimate areas of an individual's personal affairs. Financial transactions can reveal much about a person's activities, associations, and beliefs.[88]

Where the transactions here are the direct and intended articulation of an individual's activities, associations and beliefs, the interests shielded by the First Amendment could scarcely be more at stake.

Other cases are in accord. In *Shelton v. United States*,[89] a Klan leader was cited for contempt of Congress for failure to produce certain specified books, records, documents, correspondence and memoranda relating to Klan organizations. Judge Fahy, writing for the court, ruled that Shelton's failure to raise a more timely First Amendment objection and his refusal to comply with even those portions of the subpoenas not raising First Amendment issues, vitiated his defense. However, Chief Judge Bazelon and Judge Wright, in a special concurrence, held that had Shelton raised a timely First Amendment defense before the committee, the Supreme Court's decisions in *Bates v. Little Rock*,[90] *NAACP v. Alabama*,[91] and *Louisiana ex rel. Gremillion v. NAACP*,[92] would have precluded compulsory disclosure of Klan membership lists to the committee. Again, in *Liveright v. Joint Committee*[93] the district court indicated a deep concern for associational privacy. A committee of the Tennessee legislature there sought to investigate the "subversive" activities of a Tennessee civil rights organization. After reviewing the Supreme Court's actions in shielding the

86. 13 Cal. 3d 238, 529 P.2d 590, 118 Cal. Rptr. 166 (1974).

87. 416 U.S. 21 (1974).

88. Burrows v. Superior Court, 13 Cal. 3d 238, 246, 529 P.2d 590, 595, 118 Cal. Rptr. 166, 171 (1974).

89. 404 F.2d 1292 (D.C. Cir. 1968), *cert. denied*, 393 U.S. 1024 (1969).

90. 361 U.S. 516 (1960).

91. 357 U.S. 449 (1958).

92. 366 U.S. 293 (1961).

93. 279 F. Supp. 205 (M.D. Tenn. 1968).

membership lists of controversial organizations from compulsory disclosure, Judge Miller ruled that the legislative committee could not compel the disclosure of unpopular beliefs and associations. Accordingly, he enjoined the committee's investigation.

In January of 1974, the Supreme Court of New York county dismissed a criminal indictment against several Republican members of the New York state assembly charged with conspiracy to violate the New York election laws.[94] Under the statute,[95] it was a misdemeanor to distribute any form of political literature without revealing the names of its sponsors. The *Duryea* court found the statute to be overbroad and in violation of the First Amendment. Justice Roberts' opinion stressed the Supreme Court's pronouncement in *New York Times v. Sullivan*[96] of a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open."[97] If the First Amendment is indeed "the darling of the Constitution's nursery" and "the pursuit of its highest aims is an end in itself",[98] it will permit the SWP campaign committees to retain their precious anonymity. Should they be compelled to disclose their financial contributors, it is likely that the state's storehouse of ideas will be diminished by at least one strong dissenting voice and the criticism of other minority parties will also be stilled.[99]

First Amendment Mandate— The Least Restrictive Alternative

There can be no question that the state has an important interest in safeguarding elections from the improper use of money to influence the conduct of candidates, and to inform the public regarding the nature of campaign support.[100] One need only glance at recent headlines to determine the extent of public demands for campaign spending reform.

94. People v. Duryea, 351 N.Y.S.2d 978, 76 Misc. 2d 948, *aff'd* 354 N.Y.S.2d 129 (1974).

95. N.Y. Elec. Law § 457 (McKinney 1967).

96. 376 U.S. 254, 270 (1964).

97. People v. Duryea, 351 N.Y.S.2d 978, 984, 76 Misc. 2d 948, 953 (1974).

98. *Id.* at 983, 76 Misc. 2d at 952.

99. *See also* Lewis v. Baxley, 368 F. Supp. 768 (M.D. Ala. 1973); Hentoff v. Ichord, 318 F. Supp. 1175 (D.D.C. 1970); Levinson v. Attorney General, 321 F. Supp. 984, 986 (E.D. Pa. 1970); Wallace v. Brewer, 315 F. Supp. 431 (M.D. Ala. 1970); Zwickler v. Koota, 290 F. Supp. 244 (E.D.N.Y. 1968), *rev'd as moot sub nom.* Golden v. Zwickler, 394 U.S. 103 (1969).

100. Burroughs v. United States, 290 U.S. 534 (1934); Brown v. Superior Court, 5 Cal. 3d 509, 487 P.2d 1224, 96 Cal. Rptr. 584 (1971).

Proponents of the Political Reform Act of 1974 contend that the public's concern for election reform is vindicated by the provisions proscribing anonymous contributions of more than $50 to any candidate or committee and those prohibiting the secret donation of services to such candidates or committees. The same claims have been made for the Waxman-Dymally Act which amended the California Election Code so that political gifts by a single contributor cannot exceed $100. Its supporters assumed that as a result the electorate would be able to participate meaningfully in the political process on a broad scale, armed with the knowledge of who the individuals and organizations are that exerted proportionate amount of influence on the campaigns of major party candidates.

Yet at the same time, it is axiomatic that these statutes "must be narrowly tailored to further the state's legitimate interest."[101] As stated in *United States v. Robel*:[102]

> [W]hen legitimate legislative concerns are expressed in a statute which imposes a substantial burden on protected First Amendment activities, Congress must achieve its goals by means which have a "less drastic" impact on the continued vitality of First Amendment freedoms. . . . The Constitution and the basic position of First Amendment rights in our democratic fabric demand nothing less.[103]

Neither the Political Reform Act of 1974 nor its predecessor, the Waxman-Dymally Act, achieves its stated objective by resorting to the "least restrictive alternative." As discussed previously, political organizations and candidates, especially controversial ones with a long history of harassment, may depend for their very existence upon support, financial and otherwise, from anonymous sources and from the guarantees they can provide to those performing services for them that their involvement will not be publicly revealed. To this end, it is eminently reasonable and indeed constitutionally commanded that any scheme of political financial disclosure laws contain some sort of escape valve for controversial third party candidates.

Possibly because of its Populist and later Progressive party heritage, Minnesota has adopted less restrictive financial disclosure laws so that political candidates and their election committees are permitted the "breathing space" that precious First Amendment freedoms need and

101. *See generally* Grayned v. City of Rockford, 408 U.S. 104, 116-17 (1972).

102. 389 U.S. 258 (1967).

103. *Id.* at 268. *See also* Elfbrandt v. Russell, 384 U.S. 1118 (1966); United States v. Brown, 381 U.S. 437, 461 (1965); Griswold v. Connecticut, 381 U.S. 479 (1965); Shelton v. Tucker, 364 U.S. 479, 488 (1960); Vogel v. County of Los Angeles, 68 Cal. 2d 18, 434 P.2d 961, 64 Cal. Rptr. 409 (1967).

constitutionally demand to survive in an often hostile environment.[104] Established by statute, the Minnesota Ethics Commission is empowered to grant immunity of disclosure to individual associations, members and contributors when it determines that revealing their sources of support would result in economic or physical coercion.[105]

Pursuant to this statute, in October of 1974 the commission exempted the Minnesota Socialist Workers 1974 Campaign Committee from reporting the name, address, occupation and principal place of business of its contributors, lenders or endorsers. As a result legitimate political dissent is permitted to flourish along with the *vox populi* of the two major parties.

In the same vein, the state of Washington has enacted stringent campaign financing regulations which require all campaign contributions over $5.00 to be fully disclosed even as to unpaid local officials.[106] Adopted in 1972, the legislative purpose if clear:

> It is hereby declared by the sovereign people to be the public policy of the State of Washington: . . . (4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people . . . . (10) That the public's right to know of the financing of political campaigns . . . and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.[107]

Nevertheless, the Washington laws also contain provisions empowering suspension or modification of any campaign finance reporting or personal disclosure statement provision after a hearing, if it is found (1) that literal application of the act works a manifestly unreasonable hard-

104. NAACP v. Button, 371 U.S. 415, 433 (1963).

105. Ethics in Government Act § 8 MINN. STAT. § 10A.20 (1974) provides that:

Subd. 8. "The commission shall exempt any association or any of its members or contributors from the provisions of this section [campaign reports] if disclosure would expose any or all of them to economic reprisals, loss of employment or threat of physical coercion.

An association may seek an exception for all of its members or contributors only if it proves by clear and convincing evidence that a substantial number of its members or contributors would suffer a restrictive effect on their freedom of association if members were required to seek exemptions individually."

Subd. 9. "The commission shall exempt any individual from the provisions of this section who, by written request, demonstrates by clear and convincing evidence that disclosure would expose him to economic reprisals, loss of employment or threat of physical coercion."

"The commission shall issue a written order to exempt the individual."

106. WASHINGTON REV. CODE § 42.17.060(2) (1972).

107. *Id.* § 42.17.010.

ship, and also (2) that such suspension or modification will not frustrate the purpose of the act.[108]

The ultimate worth of provisions such as the Minnesota and Washington exemption clauses is that they eliminate from disclosure legislation its "selective deterrence" effect without impairing the basic policies of the law. The problem was well identified in the *Yale Law Journal*:

> A particularly pernicious aspect of disclosure legislation is its selective deterrence. On its face it may be impartial, aimed at all groups and viewpoints. This apparent impartiality may, however, mask actual discrimination against unpopular ideas. The major sources of deterrence are social and economic pressure; these are most effective when they reflect, and are reinforced by, the majority sentiment of the community.[109]

The Minnesota and Washington laws give those proclaiming "unpopular ideas" their constitutionally required opportunity to demonstrate, by classic First Amendment balancing means, that the gains to be won by disclosure would, in their particular situation, be outweighed by the harms they would subsequently endure.

The need to establish some sort of balancing mechanism is perhaps best revealed by SWP's struggle for existence in Los Angeles. Its membership has experienced unparralleled harassment and intimidation, despite the fact that it represents no threat to the integrity of the electoral process. The opposing parties in the instant case have not submitted a single declaration even intimating that the electorate has expressed any interest whatsoever in the SWP's financial backers or that failure to make this information public would compromise the integrity of the political process. Paradoxically, the main justification for urging disclosure is based on the dubious premise that third parties may field a slate of "puppet" candidates or "stalking horses" in conspiracy with one major party to divert votes which rightfully belong to the other major party.[110] Further examination, however, would reveal the hypothesis to be no more than a cinder in the theoretician's eye. The SWP has yet to receive any secret donations from wealthy supporters in return for the plums of patronage, nor does it expect that any are forthcoming. The goals of the disclosure laws are scarcely advanced by requiring compliance by the SWP.[111] There is further no sugges-

108. *Id.* at § 42.17.370(9).

109. Comment, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084, 1108 (1961).

110. Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975), *aff'd in part and denied in part*, 44 U.S.L.W. 4127 (U.S. Jan. 30, 1976).

111. Note, *Developments—Election Law*, 88 HARV. L. REV. 1111, 1247 (1975).

tion that the disclosure provisions of the 1974 Political Reform Act were directed toward committees and candidates of minority parties. As noted earlier, California law does not even presently permit the names of many SWP candidates to appear on election ballots.

Moreover, SWP campaign committees are not naive regarding their chances of defeating major party candidates. They do not pretend to compete in terms of votes eventually to be won or campaign coffers to be filled. For them, though their candidates are surely serious ones, elections are vehicles to educate a public to new ideas and approaches. This view of the political process is strongly endorsed by the American historical experience.

As a consequence, those seeking to subvert the electoral system would be wise to select other targets for their energies. The seeds of political corruption and patronage are not sown by the SWP nor will the public vote more intelligently upon learning of those who support or furnish services to the SWP.[112]

Finally, in order to avoid the discrimination which the SWP has suffered, disclosure laws paralleling the Minnesota and Washington exemptions are needed. These statutes carefully balance the actual need for disclosure of the identity of a particular committee or candidate involved against the prohibitions of the First Amendment. Moreover, the fifty dollar or one hundred dollar limit on anonymous contributions and on campaign expenditures is too insubstantial to correct the abuses the laws were designed to alleviate. As one commentator has observed with clear relevance to the issues:

> Disclosure of all contributions would serve no useful purpose; in fact, the surest way to impair the value to be achieved by the disclosure requirements would be to compel the collection of data so massive as to baffle the investigator or newspaperman. But if the disclosure were required only for amounts sufficiently large to give rise to the possibility of the evils disclosure is intended to prevent, comparatively few of the people who might fear retaliation would be obliged to report. (How many university professors or union officials could contribute enough to hope to exert undue influence on a President or even a Congressman?) Those wealthy enough to

112. *See id.* at 1247-51. Moreover, it is significant that the platform of the SWP explicitly attacks the very sorts of interests against which the campaign disclosure laws were intended to protect. Record at 172-75, SWP v. Brown, *supra* note 8.

113. A. ROSENTHAL, FEDERAL REGULATION OF CAMPAIGN FINANCE: SOME CONSTITUTIONAL QUESTIONS 50 (1972). *See also* Note, *Recent Decisions, Constitutional Law-Federal Election Campaign Act of 1971 Construed to Avoid Constitutional Question Raised by Compulsory Disclosure Provisions*, 23 EMORY L.J. 845, 860 (1974); Redish, *Campaign Spending Laws and the First Amendment*, 46 N.Y.U.L. REV. 900 (1971); Comment, *The Constitutional Right to Anonymity: Free Speech, Disclosure and the Devil*, 70 YALE L.J. 1084 (1961).

> make huge contributions would generally be immune from any fear of retaliation. On the other hand, if contributions of $1, or $10, or sums much larger but still well outside the range of possible harm, had to be disclosed, contributors might still feel insecure against the possibility of disclosure, while there would be little public gain to balance off against the risks of deterrence. Perhaps different levels would be appropriate, depending on the office involved. In any event, a reasonably high floor on the amount of which contributions would have to be reported would go far to overcome constitutional objections.[113]

This author submits that the fifty dollar and one hundred dollar limits are not "reasonably high floors." Campaign abuses cannot be avoided by naming all contributors of fifty dollars or more. The data in respect to compaign spending are staggering to even the most fertile imaginations. Total campaign spending in this country increased from $200 million in 1964 to $300 million in 1968.[114] In 1972 California races for Congress and the State Legislature, $13,600,278 was expended, an increase of 52 percent over 1970.[115] Congress and Senate seats cost $64,000 each; Assembly seats, $37,000. In the most recent election for Los Angeles mayor, the two most popular candidates together spent over $2.25 million dollars. Even a special election for a Los Angeles City Council post cost the winner more than $67,000. A recent *Los Angeles Times* article listed campaign spending figures for 1974 elections. Various lobbyists gave the following sums to gubernatorial candidates:

1. The California State Employees contributed $14,650 to Governor Brown and $7,500 each to Lieutenant Governor Dymally, Secretary of State Fong and unsuccessful controller candidate Bagley;
2. The California Medical Association's Political Action Committee gave unsuccessful gubernatorial candidate Flournoy over $91,000, and Brown $15,000;
3. The Oak Tree Racing Association gave Brown $10,000;
4. Nelson Rockefeller gave Flournoy $5,000;
5. The United Auto Workers gave Brown $41,400;
6. Playboy magazine gave Brown $49,000;
7. The Western Growers Association gave Flournoy $51,269 and $38,091 to unsuccessful Lt. Governor candidate Harmer;
8. Pacific Lighting Corporation gave Flournoy $10,000.[116]

Contributions in the neighborhood of fifty or one hundred dollars scarcely compare to the above figures, and make ludicrous any claim

114. *Hearings on H.R. 8627, H.R. 8628 Before the Subcomm. on Interstate and Foreign Commerce*, 92d Cong., 1st Sess. 58 (1971).

115. 4 CALIFORNIA JOURNAL 60 (Feb. 1973).

116. L.A. Times, Dec. 18, 1975, § 1, at 3, col. 2.

that these contributors jeopardize the honest functioning of the political system. For campaign organizations like the SWP which depend almost exclusively on many small gifts and expenditures, the policies of the disclosure laws are simply punitive.

From this perspective the purported interests served by the disclosure laws must be scrutinized. It is hornbook law that in assessing the state's asserted justifications for particular legislation, the justifications must be measured against the actual parameters of the legislation itself.[117] It is not enough, for example, that a law be titled as a "Political Reform Act" or that it contain a preamble indicating that its goal is to acquaint voters with needed information. Pious generalities about good government and a knowledgeable electorate will not suffice. The law, as written, must in fact embody such goals.

Although a self-proclaimed legislative purpose cannot automatically be taken at face value, investigation of the intentions behind the two laws challenged here is revealing because it establishes that the actual legislation was not even responsive to the stated aims.[118]

It is plainly evident that an explicit design of the Political Reform Act of 1974 is to reduce the control over candidates and issues exerted by the "wealthy" and the "large" contributor in an era of greatly accelerating campaign costs, and to inspire greater overall citizen participation in the electoral process.[119]

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117. Kusper v. Pontikes, 414 U.S. 51 (1973).

118. Cal. Gov't Code § 81001 (West Supp. 1975) establishes as the legislative intent:

> § 81001. "The people find and declare as follows:
>
> (c) Costs of conducting election campaigns have increased greatly in recent years and candidates have been forced to finance their campaigns by seeking large contributions from lobbyists and organizations who thereby gain disproportionate influence over governmental decisions;
>
> . . . .
>
> (f) The wealthy individuals and organizations which make large campaign contributions frequently extend their influence by employing lobbyists and spending large amounts to influence legislative and administrative actions;
>
> (g) The influence of large campaign contributors in ballot measure elections is increased because the ballot pamphlet mailed to the voters by the state is difficult to read and almost impossible for a layman to understand . . . .

119. Governor Brown himself has observed that the present system of campaign financing "gives an unfair advantage to candidates with money and almost forces candidates to accept large contributions from special-interest groups and lobbyists." 4 CALIFORNIA JOURNAL 60 (Feb. 1973) (emphasis added).

Similarly, in a press release issued by the West Coast Office of Common Cause on October 23, 1974, entitled "Common Cause Releases Study on Sources of Contributions to 1972 California Legislative Campaigns," and accompanying the 38-page report, Michael Walsh was quoted as saying: "It is popularly assumed that legislative campaigns are financed by $10 and $15 contributions solicited from around the neighbor-

The same end sought by the Political Reform Act of 1974 was reflected in earlier campaign disclosure laws including Waxman-Dymally. The California Supreme Court recently outlined the conditions culminating in the strengthening of disclosure laws affecting ballot measures in 1923:

> The report of the special committee contained a study of seven such measures, and the committee concluded that in each instance particular financial interests were able to exert sufficient influence to be determinative. The "outstanding features" disclosed by the committee's investigations were "[s]tartlingly large" campaign expenditures, and campaign "methods and practices that constitute a menace to our electoral system."[120]

Therefore, a compelling interest can only be indicated by statutes narrowly attendant to "startlingly large" contributions capable of "exert[ing] sufficient influence."

In sum, the elaborate and systematic surveillance of one minority segment of American political life mandated by the pertinent sections of the California Government Code and the Waxman-Dymally Act goes well beyond the legitimate governmental interest while at the same time curtailing citizen participation in unpopular political causes.

Nor is there merit to the contention that third parties cannot be exempted from disclosure because of the danger that they will then be used as "fronts" or "stalking horses" by unscrupulous supporters of one major party to subvert the other party's campaigns. This argument, while hollow factually, possesses a certain element of irony because it holds that minor parties must bear the ultimate burden of preventing corruption in the major parties, even when it will culminate in their own demise.

However, even if this were an acceptable state of affairs, the monetary limitation is far too inconsequential to achieve the purported objectives in a constitutionally satisfactory way. Although there has been no indication that SWP campaign committees have ever been

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hood. It's just not so. The Common Cause study shows that in the 1972 general election, the majority of all contributions reported by candidates from the state Legislature were large contributions of more than $500. And sixty percent of these large contributions came from organized groups special interests, political parties, and slush funds controlled by incumbent legislators not from individual citizens."

Therefore both Governor Brown and the Chairman of California Common Cause have identified the critical problem with respect to campaign financing as large contributions by organized groups. These same sentiments were expressed in § 81001 of the Political Reform Act *supra*.

120. Brown v. Superior Court, 5 Cal. 3d 509, 521, 487 P.2d 1224, 1231, 96 Cal. Rptr. 584, 591 (1971) (emphasis added).

manipulated for the purposes hypothesized above, or that the threat in general is genuine, it is obvious that fifty or one hundred dollar contributions could not serve as ammunition for the destruction of rival parties. It is true that SWP committees cannot and do not spend vast sums of money; but if they did, money gifts would have to far exceed the lower limit here in order to exert any significant influence on ongoing campaigns.

Blanket application of the fifty or one hundred dollar requirement further offends the First Amendment overbreadth doctrine. Even assuming *arguendo* that for certain local elections the above figures might bear a constitutionally significant relationship to the desired ends, it cannot be genuinely contended that the relationship would equally obtain for larger statewide campaigns such as the governorship. As in *Shelton v. Tucker*,[121] where the Supreme Court held that an Arkansas statute could not inquire into a teacher's protected relationships more broadly than was absolutely necessary to determine his or her occupational competence, so here must the relevant bounds on campaign gifts be appropriately scaled to the nature of the particular sort of election involved. Such is the essence of overbreadth principles.

The constitutional infirmities are not rectified by holding that the statutes do not require itemization of the precise amount of money furnished by each named contributor or expended to each individual.[122] The gist of the SWP's claim is that mere public identification of the names and employers of those linked with the committee will create substantial hardship in the lives of their adherents and supporters, and those performing services for them. Particularizing the degree of financial assistance provided or spent may conceivably exacerbate the extent to which certain individuals experience harassment and reprisals. But the core problem will yet remain; government officials fearful of just the existence of the SWP, anxious landlords, employers, friends, associates and citizens dedicated to eradicating the influence of "subversives" cannot be expected to draw fine distinctions—distinctions which are in any case of doubtful constitutional vitality.

Conclusion

When a statute interferes with First Amendment freedoms of association, privacy and anonymity, the most rigorous standard of constitutional interpretation is applied. The statute must serve a compelling

121. 64 U.S. 479 (1960).

122. *See* Warden v. Brown, 185 Cal. App. 2d 626, 8 Cal. Rptr. 518 (1960).

state interest, and it must do so by the means which are "least restrictive" of constitutional rights. The statutes here fail to use the least restrictive means. The sections of the 1974 Political Reform Act and the Waxman-Dymally Act respecting campaign disclosure, reaching controversial organizations historically targets of intimidation, reprisals, and terror tactics, and encompassing low-level political activity, violate this precept.[123]

In a brilliant and moving opinion, Chief Judge Bazelon describes the dilemma faced by third parties forced to reveal the names of their contributors as follows:

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123. The author believes that two recent "campaign disclosure" decisions strengthen his arguments for the First Amendment right to the privacy of political beliefs and associations: Buckley v. Valeo, 519 F.2d 821 (D.C. Cir. 1975), *aff'd in part and denied in part*, 44 U.S.L.W. 4127 (U.S. Jan. 30, 1976) (Nos. 75-436, 75-437); Doe v. Martin, 44 U.S.L.W. 2243 (D.D.C. Dec. 2, 1975).

In *Buckley, supra*, the Supreme Court denied a constitutional challenge by the Conservative Party of New York, among others, that the disclosure provisions of the FEDERAL ELECTION CAMPAIGN ACT OF 1971, § 314 *as amended* 2 U.S.C. § 434 (1974) when applied to minor-party and independent candidates was overbroad. The Court stated that in view of the fact that the best the appellants could offer was the testimony of several minor-party officials that a few persons refused to make contributions because of the possibility of disclosure, that "the substantial public interest in disclosure identified by the legislative history of this Act outweighs the harm generally alleged." *Id.* at 4148. Although it rejected a blanket exemption for third parties and their candidates, the Court cautioned: "Minor parties must be allowed sufficient flexibility in the proof of injury to assure a fair consideration of their claim. The evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment or reprisals from either government officials or private parties." *Id.* at 4149. This author submits that the SWP has met the burden of proof by documenting instances of "substantial harassment."

Moreover, with regard to the exposure of small contributors, Chief Justice Burger observed: "To argue that a 1976 contribution of $10 or $100 entails a risk of corruption or its appearance is simply too extravagant to be maintained. No public right-to-know justifies the compelled disclosure of such contributions, at the risk of discouraging them. There is, in short, no relation whatever between the means used and the legitimate goal of ventilating possible undue influence. Congress has used a shotgun to kill wrens as well as hawks." *Id.* at 4199. (Burger, C.J., concurring and dissenting).

In *Doe v. Martin*, the SWP challenged the same disclosure provisions with salutory results. The court held that because of a history of government harassment and government initiated private harassment of SWP campaign contributors their First Amendment right to associational privacy had been chilled. Judge Leventhal was of the opinion that the elimination of routine and automatic public disclosure of contributors to unpopular minor parties that have been harassed would remove a measure that opens the door to further harassment in a context where it is unlikely that what will be disclosed will bear significantly on the election, and where the particular withholding of disclosure will not undercut the overall objectives of election reform maintainable through the law's other provisions.

> Associational privacy is of particular importance to minor parties. Members of mainstream organizations such as the major parties have little to fear from being so identified. But to be publicly labled e.g., Socialist, Communist, or Nazi is to invite social ostracism, loss of business or employment, verbal or physical abuse, or worse. Fearing these consequences, many minor party adherents likely will be deterred from acting on their convictions. And given the fragile nature of many minor parties, the loss of even a small portion of their support may well be fatal.[124]

124. Buckley v. Valeo, 519 F.2d 821, 908 (D.C. Cir. 1975) (Bazelon, C.J., concurring and dissenting) (footnotes omitted).