A Conversation on the Internet and Campaign Finance

Laura MacCleery:

I'm very much looking forward to this next conversation with Professor Lessig and two new speakers, Micah Sifry, who will moderate this conversation, and Adam Bonin.

Micah is co founder and editor of the Personal Democracy Forum, a website and conference that covers the ways technology is changing politics and techpresident.com, an award winning blog on how the American presidential candidates are using the web and how the web is using them.

In addition to organizing the annual forum conference, he consults on how political organizations, campaigns, nonprofits and media entities can adapt to and thrive in a networked world. In that capacity he's been a senior advisor to the Sunlight Foundation since its founding in 2006.

Adam Bonin is chairman of the board of directors for Net Roots Nation and a member of the law firm of Cozen O'Connor in Philadelphia where he represents clients in election law matters and has been extensively involved in efforts on behalf of the rights of online speakers.

In March of 2006, most relevant to this conversation, he achieved a major victory before the Federal Election Commission on behalf of leading political bloggers, securing significant new rights for speakers on the Internet to engage in online political speech and advocacy.

I think this is going to be a really interesting conversation. I'll let Micah and the others take it away from here. Thank you.

Micah Sifry:

Thanks a lot, Laura.

Good afternoon, everybody.

So it's kind of fun to be here to talk about the Internet and campaign finance. Some of you may not know, but about 12 years ago I left a long time job at the Nation Magazine and went to work for Public Campaign, which is one of the groups that have been working very hard for public financing of elections since 1997.

And when I left the Nation, my colleagues there all congratulated me because they said, "Oh, you're going to go to go work on the issue of campaign finance reform, and that's like lifetime employment."

But, seriously, I do want to salute — there were a couple of names mentioned this morning about people whose shoulders we stand on, and I do want to salute some fairly obscure, but maybe not to this room, names of people like Randy Kuler, and Ben Centuria and the late Marty Geezer and Gwen Patton, who a long time ago came up with the idea which they then called democratically financed elections, and they did the early work that led eventually to the campaign in Maine, and then from Maine, Massachusetts, Arizona, and onward.

So I want to salute those long distance runners, and hope that it maybe isn't really lifetime employment.

So I'm going to start out by trying to frame the discussion, and then I see my role mainly to pepper these two guys with provocative questions.

But just to frame things, the question I hope we're going to dig into is whether the Internet is like other media that came before it or if there's something qualitatively different going on here as it relates to the world of political speech and political action.

It's my feeling, and I think that Michael Malbin kind of reinforced that feeling this morning, that up until recently most of the focus of the campaign finance reform community has been, when it comes to the Internet, has basically been about mapping concerns that grew up around the older broadcast and capital intensive political system onto this new space.

So we heard a lot — we've heard a lot over the years about how the Internet is going to be kind of like this big loophole that corporations, labor unions, 527s, individuals – that they're going to flood it with stealth campaigns and that it's essentially just another kind of TV or something, and that, therefore, we'd better control it.

And I don't think that is really a very productive way of thinking about this. What we need, I think, is to start thinking about how the Internet is perhaps enabling a much more level playing field for politics, one where money and money's ability to push a message at voters matters less and less and people and their ability to gather around and spread the messages that they find compelling matter more and more.

And so the whole reform discourse, which has been I think mostly about two things. Which is how do you constrain the concentrated application of private money on the political process and how do we provide significant amounts of alternative public financing. We need to explore and talk about how we strengthen, how we expand this new public sphere that the Internet is making possible and, thus, achieve the goals of reformers — which is to reduce the dominance of big money over the electoral process.

So I want to suggest that maybe things like expanding affordable access to the high speed Internet or network neutrality or expanding fair use should be thought of as campaign finance reform

issues, and that ultimately this is about how we structure democracy and how people access and participate in the public conversation in how we're going to govern ourselves.

I have to say, I worked for eight years in Public Campaign on the public financing issue, but I think I've seen more change in how politics works, thanks to the rise of the Internet, in the last five years, than anything done in terms of passage of campaign finance reforms; in terms of people being able to have a more meaningful voice in the process; in terms of candidates who lack establishment backing being able to launch viable campaigns for office; and in terms of exposing the system of special interest influence peddling and I think even in terms of greater voter turnout.

So that's not to say that we shouldn't worry anymore about the role of big money in the process. Special interests still have disproportionate influence. The cost of campaigns keeps rising beyond the reach of ordinary people.

We still have politicians spending ridiculous amounts of time raising money, and average voters don't feel that they matter much. But I think — and the data from the Pew Internet Center seems to hold this out — that there are two electorates forming. There's one, maybe 20, 25 million people in all, who are high attention, high involvement voters, and the Internet is a big piece of that. These are people who are much more involved in the participatory aspects of politics. They're creating and sharing their own messages and campaigns, and they're really actively influencing the process in some positive ways.

And then there's a larger group of low attention voters, and I think this maps probably somewhat closely to people who are less likely to have high speed access to the Internet, and they are much more likely to still only be reachable by the older, more capital intensive methods of influencing voters.

So while I support and still embrace the concerns that people have about what we have to do to limit the power of big money, I hope we can spend more time figuring out how we expand Internet access and active participation. And, you know, as Michael Malbin said, there are limits to what we can do just with limits. So those are my framing thoughts.

I want to now turn to Larry and Adam. Let me start by asking you each a big question.

So let's assume, for argument's sake, we all agree the rising cost to campaigns is still a concern. Special interests have too much influence. Politicians have to spend too much time raising money. Average voters feel shut out, like their voices don't matter.

Do you guys think the Internet is changing any of this? And when I say the Internet, I mean the low barriers to entry, the ease of group formation and collaboration. Is the Internet changing any of these fundamental problems for the better?

Larry?

Lawrence Lessig:

I don't think that's a big question. That's called a softball question.

So the answer is yes.

But I think you have to place it in a bigger context.

So I've just spent 10 or 12 years of my life working in the area of culture. And the story that I tell in the last book I wrote in this space, "Remix," is a story of a move from a read write culture where people felt not only that they would consume culture, but create it and share their creativity with others, to the 20th Century read only culture where culture is essentially something you consume because it's broadcast to you, and that the 21st Century is reviving the read write practice for culture, and that in that space, what the 21st Century tells us is that we need to radically remake the set of regulations around culture that were produced in the 20th Century, regulations that were about protecting read only culture and now regulations that should enable read write culture.

I think exactly the same story should be told about politics. There was a read write politics. That was 19th Century politics.

Sometime in the 20th Century it became read only politics where the most important thing was no longer state organizations or things like that, but it was how do you broadcast a message in the a way that the most people will be moved by it.

The 21st Century, because of these technologies, is reviving read write politics once again. And I think, once again, we need to think about how to radically change the regulations that were written for the 20th Century read only politics to enable read write politics to function.

And just like I think in the culture space, that change means radical deregulation of this space for culture — so too in politics. I think we need radical deregulation of political speech in the context of the Internet.

Now, the only way that is effective is if it goes along with what I talked about in my talk, public funding, or citizen funding of elections. If you don't have that, then deregulation here is going to be a disaster.

But if you do have that, if you do have citizen funded elections, I don't care who says what using what ever means they want, however they're funded. Doesn't bother me at all.

I think the critical thing we should be encouraging is participation in speech in that space by the widest range of people and not worry so much about regulating fairness and equality and all that stuff, which is a nightmare and typically just blocks the grassroots from being able to speak rather than really enabling any real equality.

Micah Sifry:

Okay. But let's posit for the moment that we're going to get public financing on that side.

Lawrence Lessig:

Really? Okay. Great.

Micah Sifry:

Let's just posit — because I want to — we know where your position is on that, right? And, actually, I have to say Larry and I did not get a chance to talk before, and I have no idea where your thinking is on these questions.

But when you say deregulate the Internet, are you saying basically anything goes, no need for disclosure rules, no need for setting a threshold where a group or an individual who is spending money online needs to do some kind of filing as a political committee?

I mean, the FEC has taken a fairly hands off position after initially maybe leaning the other way —

Lawrence Lessig:

Yeah, because of Adam's role. I mean, I think this is —

Micah Sifry:

Where would you — all right. Go ahead, jump in, Adam.

Adam Bonin:

Well, I mean, first of all, even though I'm somewhat responsible for writing that biography, which was, I was reminded earlier today, that rather than taking credit for the victory that there were six commissioners at the Federal Election Commission who themselves made the vote and passed the regulation, and they probably deserve some of the credit as well and shouldn't be ignored in this process.

I think even before you get to the question of sort of what kind of regulation is needed for this space, we need to think about sort of the technological essentials that have allowed us to even get to this point.

And that's the fact that Blogger and Blogspot are free, that anybody can post and have hosted their text online that is readable by anyone in the world, infinitely at no cost to them, and that sites like YouTube are free, that anybody can upload their own video and that anybody can view that video, again, for free.

I mean, these are not things which are mandatory; these are not things which are legally required.

These are things that exist, because they're believed to fit Google's business model right now.

That may not be the case in five years. And so even while we want to talk about what the Internet can do and is doing right now, we have to take a step back and look at why is it even able to do that. And making things free, on the one hand, has really enabled Blogger and YouTube to take off and be incredibly essential. At the same time, this same no cost thing as applied to newspapers is gutting the journalism from traditional media that makes so much of this remixes possible.

If you can't — if the press isn't funded that's giving people the raw materials, that they're then allowed to, you know, to link to and post about, then what are you blogging about anyway?

You know, without reporters, whether they're funded by the Philadelphia Enquirer and the Washington Post or by Josh Marshall and Talking Points Memo, I mean, you still need the raw materials to be produced somewhere.

Lawrence Lessig:

Yeah, the Internet has — that's absolutely right. The Internet has done enormous damage to an extraordinarily important part of the ecology of information that politics depends upon: Investigative reporting.

So that is a thing that newspapers, for a brief period of time, gave democracy, and that's been taken away. And this is a problem. We've got to figure out how to solve that problem.

But I push back a little bit on your claim that it's because things are free. This is an odd position for me to be in. But, you know, the Internet's not free. You and I pay for our access to the Internet.

People like Google pay an enormous amount of money for the bandwidth that they consume. There's lots of stuff that's paid for here.

The critical thing is, as I know you and I agree, to make sure that platform owners don't have legal authority to begin to leverage their ownership over the platform to rent seeking over the content. And we have to continue to have sufficient competition in the space so that the diversity that you and I celebrate right now will continue.

It's not that it has to be free. It just has to make sure that we don't have a business model of cable television migrating over to the Internet.

Adam Bonin:

I mean, absolutely. I mean net neutrality is part of the campaign finance. If preferred speakers can get their stuff onto the tubes faster and with more people accessing them at once, you know, that's going to lead to distorted outcomes.

Micah Sifry:

Right. Well, let me — okay, so I actually want to stick a pin in this question of whether the Internet is hurting our ability to know what we need to know, which is a function that newspapers, at least theoretically, have been providing or not. And we'll come back to that.

But I want to stay on this question of regulation online or the no need for regulation.

Larry, clarify for us. Do you think there's no need to ask anybody who's speaking online to say anything about who's funding them if they're talking about politics, they're raising money for a candidate? I mean, right now the threshold that the FEC has set is basically, you know — first of all, they leave out whatever you spend on your computer and your Internet access and so on, and then, up to a thousand dollars, an individual or a group raising or spending in support of a candidate, there's basically — you don't have to file anything, just do whatever you want.

But above a thousand, you have a register as a political committee, you have to put disclaimers on your content, and you have to, I think, as well if you're sending out mass emails.

Am I right, Adam? We have lawyers here. They should be explaining —

Adam Bonin:

I mean, basically what's regulated right now is when you spend money to place your content on someone else's site. And advertising was what they were looking at at the time.

If you paid to put up an ad, you have to stand by your add disclaimer or disclosure that you would for print or media.

What they've taken out of the process through two different means are sort of what volunteers do. First of all, anything that an individual chooses to do voluntarily online is covered by the volunteer exception.

And the other exception that gets all this money out of it is what's called the press exception, which is that bloggers, like any other journalist, if you're engaged in news, editorial and commentary about public events, then the costs that go into that production aren't counted as contributions or expenditures.

By and large, I mean, all these people have been left alone.

Micah Sifry:

Well, we were told if we left them alone, that there would be this — all kinds of evasion, stealth campaigns, campaigns would secretively pay bloggers under the table. None of that seems to have happened, right? So far?

Adam Bonin:

None of it seems to have — obviously it happened in 2004 with the John Thune Senate campaign in South Dakota where they were paying two of the bloggers.

I mean, it was reported in their FEC reports the pay lines to these individuals, and the Daschle campaign caught up it, but the media just didn't seem to care.

But since that, especially when you look at '08, if there was corruption going on online, nobody detected it, and it didn't really matter. I mean, there was definitely a lot of hullabaloo in '05 and '06 about, oh, you know, Halliburton could start a blog, you know, scary foreigners could start paying Americans to blog on Daily Kos and distort the debate. If it happened, people tend to sift through that.

Lawrence Lessig:

I don't think bloggers are enough. They're essential, but I don't think that the fact that you and the FEC have successfully protected bloggers is the end of where we should be looking for more freedom.

So, I helped start, with Joe Trippi, this organization, Change Congress. Without breaching our attorney client relationship, I'll just say you and I spent enormous amounts of time, , and I can tell you Change Congress had to spend an enormous amount of money, unfortunately not on you, to actually be able to function as an organization, legal, consistent with our laws, doing political organizing.

This is ridiculous. I mean, I'm not just saying just for me, I'm saying the level of regulation here seems to be way out of proportion to where it should be.

Now, I'm happy, again, to accept that in the world that we've got right now, you need it, because you've got so many concerns about the way money is influencing politics. These are our second or third best solutions for it.

But if we get to the world you posited, which I'm still kind of elated to imagine, where we have public funding or we have citizen funding in the broadest sense, then to answer your question, yes, I think there are certain kind of traditional, quote, regulations which free marketers don't notice as regulations. Those are things like antifraud provisions and things like what, in IP law, we think of as trademark. So linking back to say that you stand behind something is a way of just saying you know who's saying what they're saying.

And I don't have any problem with that. But I think that, actually, beyond that, there would be a field day of wiping away a whole bunch of the stuff that now clutters the opportunity for small political organizations to take off that big political organizations didn't notice because they could incorporate it inside their costs, just like in the culture space what we need is the opportunity for lots of small speakers to take off without having to hire a lawyer to advise them on fair use —

Micah Sifry:

Sure. But Change Congress is seeking to change laws, and it's lobbying Congress, and it's asking its members to call members of Congress and you're sending a clear political message of support or opposition.

I mean, where would you set the threshold? Are you saying that if — you know, obviously the thousand dollar threshold for reporting is meant to basically exempt volunteers but catch everybody else who's sort of professional, you know, activists, advocates. So are you saying that you would push that threshold higher?

I mean, I agree with you, there's a lot of legalese and paperwork and IRS filings to get, you know, your 501c3 status or whatever status you're going to get.

And one could argue that that's a hindrance to free expression or you could say but we need a certain kind of transparency and disclosure too.

So would you put it up at a million dollars, 500? I mean, where would you set that line?

Lawrence Lessig:

The problem is any answer to that question sounds ridiculous because the assumption you've made is so hard for people to imagine. So we spend an enormous amount of time to make sure that we understand what indirect contributions people are making to campaigns.

Well, in a world of public funding, we don't worry about contributions to campaigns because there are not those direct contributions.

Micah Sifry:

Okay.

Lawrence Lessig:

Now, I'm happy to admit that we might have a problem with the independent expenditures. That might create exactly the same kind of cynicism that I'm worried about with direct contributions.

That seems to me an empirical question. We have to wait and see about that.

But if we really are in the world where there is no direct contributions except the hundred dollar contributions, then I think an enormous number of these heavily centralized, New Deal like regulations get wiped away.

Micah Sifry:

And let's say we're still in the world we're in. Is regulation of the Internet, political activity on the

Internet, now too heavy, too light, just about right?

Lawrence Lessig:

That's Adam's. That's for Adam.

Micah Sifry:

All right.

Adam Bonin:

Just about right. I mean, the one place that I've thought about that there might be a need for additional regulation, because it wasn't contemplated before, and it is something of a loophole, is the whole question of extending Stand By Your Ad to YouTube.

Because you don't have to pay to place your videos on YouTube, the rules don't play. And a campaign, you know, using any user name it wants, can put video on YouTube, doesn't have to disclose that it's a campaign that's speaking. You know, PAC doesn't have to disclose that it's speaking, and it can proceed anonymously that way.

What tends to cover this problem anyway — and we saw this with the Hillary Clinton 1984 video that hit, you know, 3 million, 5 million, 10 million views before its author was exposed — is just the human desire to take credit.

When you create something that 5 million people have seen, you're going to tell someone about it, and that person is going to tell other people about it, and these things are going to get exposed.

So that is one area where I could possibly see more regulation being necessary. By and large, I think things are pretty good as is. I mean, the other thing related to that —

Micah Sifry:

Can I just ask you about that? So let me push back against something I said as well. Why do we even think this is necessary?

Adam Bonin:

I'm not saying it's necessary. I'm saying I could see it as possibly being a logical translation of the existing laws to another meaning. Especially as people stop viewing campaign ads on TV anyway because of TIVO, and that's the only place they're really seeing campaign speech.

Micah Sifry:

It might be a translation. But, again, I want to ask why do you think it's necessary? Right? I think one big difference between the world we're in right now or the world we will be and in where we were actually — when I was a kid I went to the Soviet Union a bunch of times. There's a guy there who, a professor there, who explained to me that there was more free speech in the Soviet Union than there was in America.

And I said, "What do you mean by that?" And he said, "Well, you know, you wake up in the morning, you read the New York Times, you think you know the truth, or the Washington Post or the Wall Street Journal. In Russia, we know all the newspapers are lying to us, so we have to read seven different things and then triangulate on the truth."

Well, you know, we've all become Russians now. This is who we are right now.

So my students, I have no concern at all that they're going to be able to suss out and figure out misleading stuff in this space, because that's the way they're trained. They think in this Russian like way right now.

And so even in the context of YouTube, heavy regulation or heavy requirements of transparency here, I'm not yet convinced —

Lawrence Lessig:

There's a different issue, Adam, which is you couldn't enforce it anyway. I mean, you might say that, you know, after it gets a million views, YouTube has to take it down, unless the author comes forward. I mean, I don't know how you could — all that would be to channel even more interest to somebody who is putting the video up on Bittorent or something.

And there's also a group call Anonymous, which is a very interesting phenomenon. I suggest you Google "Anonymous and Scientology" as one example.

These are hackers who take pleasure in, you know, going after various targets, some of them perhaps politically justified, some of them not. And no one knows how to expose them. It's a game.

So, you know, at the far edge here, you know, the anonymous speech is going to win out over the desire to find out who's actually behind this or that video.

Adam Bonin:

I would actually argue it in the other direction. This goes back to something that you and I started talking about almost 15 years ago, and that's the role —

Lawrence Lessig:

The student, the teacher.

Adam Bonin:

Yeah, student, teacher. Long time ago.

Lawrence Lessig:

Yeah.

Adam Bonin:

And that's the role of credibility in online space. And people trust speech more when they know who's behind it, when they have the reasons behind its motivation.

And that's why you're seeing — for example, I mean, on Daily Kos, you have the most popular website. Within the past six months all of the front page posters and an increasing number of the commenters on the site have gone from, you know, pseudonymous user names to posting under their real names, you know, to associating what they're saying to their real life biographies and experiences.

And I do think, you know, while anonymity and pseudonymity absolutely needs to be protected in this space, that at the same time, you know, there's going to be a natural evolution of people speaking under their own names as well because of the credibility I think it often affords speakers when you know it's the same person who's talking each time and you understand where they're coming from, what their motivations are.

Micah Sifry:

Okay. So let's stay on that thread for a second. I don't want to spend too much time on this conversation dwelling on the dark side, because I think often — when we talk about the Internet, often it's the boogeyman and the predators that — the scary stuff that people want to fixate on.

But what about mis-information online? You know, those emails that went around the last two years that Obama is a Muslim, you know, et cetera, et cetera, and the campaign had to spend a lot of money trying to counter them, how do you view that?

I mean, it's obviously a form of speech that — you know, you can't regulate it. You shouldn't try to regulate it. I mean, there's that saying that a lie goes around the world in the time it takes the truth to get its boots on.

Is the Internet making this problem better or worse?

Lawrence Lessig:

Yeah, so, we used to talk about this as an attention span problem. You could call it the 140

character problem.

And by that I mean there are some issues that take more than 140 characters to understand. Or you could say there are some issues that take more than two minutes to understand.

But those same issues are the sort of issues where it's only rational to spend 30 seconds trying to understand it.

So you know people will systematically misunderstand it, because it's rational to misunderstand them because, again, by hypothesis, you should only spend 30 seconds trying to understand this.

And that creates this significant problem in places where there's not an editor who says, look, I know nobody's going to understand this so we're not going to cover it because this is not going to be understood.

The Internet exacerbates this problem dramatically, not for presidential campaigns, because presidential campaigns are the sort of things where, you know, you need to get around to trying to figure this question out. The first time the issue is raised, is he a Muslim, well, that's — I'm not sure why that's interesting anyway, but some people found it particularly significant.

Okay, you're going to pay attention, and the third or fourth time around you'll get enough information to figure it out. But it's the third or fourth layer down from that, people who have information spread about them which, you know, it might take a couple minutes to try to figure out what this is about, but nobody's going to give them a couple minutes.

And for those people, for that class of information, I think this is a significant question about how we deal with that problem.

Micah Sifry:

Well, maybe this is the time to bring up the Section 230 case.

Adam Bonin:

The auto admit stuff.

Micah Sifry:

Do you want to describe that? I don't know if everybody here is familiar with this case.

Adam Bonin:

Yeah. There is this website called autoadmit.com which exists for law school students and law school applicants ostensibly to discuss the law school experience.

And what it has become, because it is anonymous and pseudonymous and nobody posts under anything like their real names, and there's no kind of culpability to that, is a cesspool of libel and slander towards law school students, and especially towards female law school students, the these are the 10 hottest women at Yale Law School I just saw this name student today, you know, and she's really showing her breasts today, on and on.

It is absolutely sick and disgusting stuff, and it is poisoning the law school experience for a number of women and making it almost an unlivable place.

What has happened, two of the women who are the victims of this corruption decided finally to sue one of these websites, to sue autoadmit.com, to sue this list of anonymous posters as well as the website itself to obtain damages.

Well, under Section 230 of the Communications Decency Act you can't sue the website itself. What that course of the law says, you know, as part of the 1996 act is that the publisher of a website is not concerned the publisher in terms of libel and defamation law.

Basically they put the onus on publishers to clean up sites themselves. At the time it was mostly because of all the pornographic images that Congress was afraid of.

But what has ended up happening as a result is it's impossible to go after the posters themselves because all you generally have at most is a IP address, and oftentimes that's just, you know, one of 50 computers at a law school library. You're never going to trace it back to the original person.

What eventually I think is going to happen over the next five to ten years is because of the unavailability of recourse to these victims is that you're going to start seeing a scaling back of the Section 230 protections and you're going to start seeing websites on the hook more for libel and slander unless they can turn over the identities of the people who post on these sites.

It is something that's starting to bubble up now. It is going to cut back on some level of Internet posting freedom.

And I don't know if in this case, given the gravity of the harm that's being caused, how much of a bad thing it is. It is troubling in a lot of respects.

Micah Sifry:

Yeah, what people need to understand — this goes to what Larry was saying about folks who aren't presidential candidates but sort of ordinary people. People are Googling these women's names, right?

Adam Bonin:

Yeah.

Micah Sifry:

Maybe they're applying for a job.

Adam Bonin:

Exactly.

Micah Sifry:

And up very high in the results are these kind of slanderous nasty comments.

Larry, do you think this is a serious problem? I mean, do we — you know, we've taken it for granted, right, that a site host, owner, does not have to police their comments, and they can't really be held legally libel.

I mean, are we on a collision course here? Are we going to see that freedom cut back? Should we?

Lawrence Lessig:

Well, I think it's first important to recognize there's a parallel, not quite as robust, set of immunity granted to websites on the basis of copyrighted material. So this is the whole issue of YouTube's defense against Viacom where Viacom says it should be responsible for copyright violations. YouTube says the statute says we're not libel so long as we take these steps to take something down.

And I think in both of these areas you're going to see a significant push back against that grant of immunity to websites.

So what would the solution look like here?

I think the more fundamental problem is a very deep architectural problem with the Internet. We don't have an identity layer in the Internet. An identity layer shouldn't be a layer that necessarily ties everything back to Adam Bonin or Larry Lessig. It should allow Adam to have an identity that isn't necessarily tied directly to easily identify him.

But a proper identity layer would allow traceability in the sense that I could, if I had the proper authority, meaning if a court said you need to find out who did this, go back and find out that it was Adam who did this.

And if we had that layer of identity in the Internet, then I think something like what Adam was describing where you say to sites, well, if you're not going to facilitate at least traceability for speech that is properly actionable, then you might face your own responsibility would be I think the type of compromise that would exist.

Now, recognize this creates an enormous problem in non democratic or First Amendment speech like places. I have no concern really that if we had that — Adam's regime in the United States, political speech could still be anonymous and that would be fine.

But I do have enormous concerns that in places like China, the same architecture of traceability is used to lock up journalists or used to lock up bloggers as it is in the Middle East and China and all over the world where free speech norms don't exist.

This has always been — the issue we talked about 15 years ago and the first classes on cyber law — the core problem of the Internet. If you have fundamentally different legal regimes operating on the same architectural platform, how do you facilitate diversity that doesn't destroy the freedom in places you don't want to destroy it?

Adam Bonin:

And if that's an argument for keeping it out of the architecture of the Internet itself and instead putting the onus on individual sites to track these things, then what you're going to have end up happening is that — I mean, that puts a severe transactions cost on the decision to host a website.

There will be third party actors like, you know, TypePad that exist and can step in to sort of track comment or identity. But, otherwise, you need to have the resources to keep all of this user information on your site in addition to everything else it also raises, obviously, the transaction costs of even deciding to comment if you have to register and give your full identity.

There's no good answer to this.

Micah Sifry:

Well, I have a feeling we may come back to it. I hope to save a little time for Q and A from the audience. No question this

is —

Lawrence Lessig:

Let's be very clear about what the architectural solution has to look like, because it doesn't have to be that we have to register and give all your identity. Right?

The architectural solution would make it so that you could go to a site, whatever site you want, and if the architecture were done right, you could give your pseudonymous identity and that's it, right?

And then, of course, if you do something libelous or slanderous, then a court might be able to say I need to know who that person is. But otherwise, you wouldn't be required to turn anything over.

And the advantage of that is it avoids the world we've got right now, which is a privacy disaster because you're forced to give all sorts of private data in all sorts of different contexts where you have no reliable control over what happens to that data.

Micah Sifry:

Well, it's worse. There's a 16 year old from, I think — I forget if it's Indiana. I just saw this yesterday. Someone forwarded me a video — who has been arrested under the Patriot Act and holed off, and his mother can't even reach him. And he's being held because they think his — they traced bomb threats, and so on, to his IP address.

Lawrence Lessig:

Yeah.

Micah Sifry:

And they believe it was hijacked, someone has taken over his IP address, but because it's the Patriot Act, the recourse there is very troubling.

Okay. I want to shift us onto a different terrain, which is — so we've heard about some of the positive effects of the Internet, the small donor revolution that's beginning to take hold, lowering the cost of communication, perhaps making it easier to expose and track down, you know, the corrupting influences.

Let's indulge in a thought experiment.

What if — should government be taking more proactive steps to expand this space in a variety of ways?

I'll give you one example. This comes from Brad Templeton, the chairman of the Electronic Frontier Foundation.

He says if the cost of — if campaigns are driven by the need to raise money to communicate with voters, which is being driven by the high cost of television, if we can find other ways to make it easy to communicate with voters that don't involve those high costs, then maybe we can reduce — take away some of the demand.

So his proposal is that when you turn 18, the government should, like, give you an email address, or when you register to vote, collect your email address, and then offer those email addresses to candidates, you know, at whatever level to have the ability to communicate directly with voters.

Maybe you limit the number of times they can email before a person says “unsubscribe me.”

Is that a crazy idea? I mean, are there things that we should be doing to expand public participation that we aren't doing here, or should the government just stay out of this?

Lawrence Lessig:

Well, I think the first thing is the government would never have thought about the innovative creative things that in fact have happened without the government. So that's pretty good evidence that there's not much good the government would do here.

But I do think that there's important things it to happen to expand access.

One of the important things that's going to happen is the growth of the free software movement in political campaigns.

So people like Aaron Swartz, who obviously works with you and works with me, have been critical in developing free software to help facilitate the running of campaigns. And that is in contrast to even progressives who have devoted enormous amounts of money to building these software packages that campaigns and political sites need, but still are proprietary so that it's extremely expensive to use them to do those sort of basic functionality that they should be able to do.

Micah Sifry:

Sure.

Lawrence Lessig:

If we could push towards a broader access to tools, and free software would do that, this would go a long way —

Micah Sifry:

I'm sorry, but you're dodging my question, which is that the government now plays a role in civic life by registering people to vote. Right? I mean, why —

Adam Bonin:

It doesn't even do that.

Micah Sifry:

Well, it allows people to vote. But why are we talking about ways that the Internet can facilitate greater participation and reduce reliance on money? And so I agree with you. I mean, there are other ways to reduce the cost of —

Lawrence Lessig:

But what I said — so here's how I wasn't dodging your question.

What I said was I have little faith that the government is going to do much good there. I would have much more hope that, you know, spreading free software in this space would do good to increase —

Lawrence Lessig:

No. Well, I hope you're going to see here Bruce Ackerman talk about his version of public financing, which I think actually goes a long way to getting the government out of having a role in setting public financing.

So I'm not necessarily wedded to the particular New Deal ish like way that we've got public finance being spoke of right now. But I want to try to avoid it as much as possible. I want to be as deregulatory as possible in this space.

Micah Sifry:

Okay.

Lawrence Lessig:

So the idea of giving every candidate email addresses, well, they pretty much have them now. I don't know that it's a huge gain. The huge gain would be —

Adam Bonin:

Campaigns could buy it. I mean, you know, let's focus on the vote. You know, let's build the highway, you know. Let us, you know, expand broadband for all. Let's get free laptops into as many people's hands as possible so that more voters can access the stuff that's out there and engage in participatory democracy.

I mean, that — you know, build the roads and let people drive on them I think is a much better solution than anything that sort of directly enables candidates. Empower voters and —

Lawrence Lessig:

Actually — look, I agree with both of you. My personal view of this is that when we turn — when somebody comes of age, that, you know, it wouldn't be a bad thing if, the same way you can open an online banking account, that you can open an online citizenship account, and that you — where all this data that the government is making available or that is it is beginning to make available, I could see my tax return if I want to see my tax return, I can see my social security account, I can

access information of interest to me that is being provided by the government, and maybe it would also tell me where my polling place is and how to contact my representative.

Those are things that — you know, those are services that I think would also expand participation in meaningful ways.

Adam Bonin:

I mean, universal voter registration is something that needs to happen. It is absolutely silly that it's up to private actors to, you know, prod voters to get themselves registered. That's where you wind up with all these problems or pseudo problems with groups like ACORN.

You know, the same government that finds me every year before April 15th can find everybody when they turn 18 and say, hi, you're registered to vote now. This is where you go to vote.

There's no reason why this can't happen as a form of voter participation.

At the same time, I want to take seriously what Jake has tweeted and try to bring this back to campaign finance, because we're talking about —

Micah Sifry:

Okay. Jake — well, I was going to shift this to Q and A So —

And I know Jake is here somewhere in the audience, Jake Brewer. Do you want to push us on that question? Where are you?

Micah Sifry:

Connect it back to campaign finance — the issue, as I understand it, why we have to be concerned of this issue of identity is if anonymous actors have greater ability to do damage online.

And so if we're worried about the stealth side of politics, the stealth side of campaign finance, do we require disclosure, right?

Jake, you're with me at the Sunlight Foundation. Transparency and disclosure is our mantra, but if the Internet makes it easier for people who really want to hide who hide, that's why the identity.

Layer is important. Does that help?

Jake Brewer:

It does. I just wanted make sure it was said.

Micah Sifry:

Oh, okay. I don't know what the previous comments were.

Adam Bonin:

But there's also a problem with transparency, and I don't know what we do about it, but I am not crazy about what happened in California with harassment of contributors to the Yes on 8 campaign.

Especially when it comes to the workplace. The idea that, you know, if someone gives $150 to a political campaign, no matter how l loathsome and wretched that campaign is that happened to receive a majority support in California, that they're going to end up being harassed at work, pressured to fire, boycotted, you know, that's a problem.

And it's a level of transparency that the Internet has enabled that causes bad — you know, before, if you had just given, you know, $100, $200 to a campaign, yes, it exists on some book at the secretary of state's office. Nobody's going to read it and nobody's going to do anything with it the information.

Now there are maps out there. I want to see who in my zip code has contributed to this campaign. Boom, it's there. Here's their houses.

Micah Sifry:

But isn't the solution that not to make it harder to access that information but to make it harder to harass people?

I mean, you know, it's one thing to say really disagree with you about, you know, your supporting that campaign. It's another thing to say I'm going to fire you or I'm going to — I mean, shouldn't the burden be there on the harassers for crossing the line as opposed to us knowing who's trying to —

Adam Bonin:

It's free speech. I mean, boycotts are a form of free speech. They're a respected form of free speech.

Micah Sifry:

Then this is part of life.

Adam Bonin:

And there's only going to be more transparency. Because the next step for sites like [INAUDIBLE] maps is to tie in, you know, the address and the phone number information that you can get easily through sites like Zavis Search and say, you know, these are the 10 contributors to this bad cause who live closest [to you]. Here are their phone numbers, here is a script —

Adam Bonin:

So what's your solution?

I think we should think seriously — I think this is a legislative issue, not a constitutional issue, about maybe raising the disclosure threshold a bit in terms of what's publicly reported, not what's reported to election commissions, but in terms of what is available to the public.

I don't know that it's useful to the public if you've only given $100 to a campaign. I think that it could well be a higher —

Micah Sifry:

Well, the threshold for federal campaigns is 200.

Adam Bonin:

Is 200.

Micah Sifry:

California has got a lower threshold.

Adam Bonin:

California's got a — it might be 500. I mean, it's an empirical question that requires some research.

Lawrence Lessig:

I think it's sloppy thinking. I think in the context of campaigns when you're giving money to a candidate, I understand why the — why we thought it was necessary to be transparent about who's giving money to a candidate because we're trying to at least use transparency to dampen quid pro quo behavior. I think it's a failed strategy, but that's why we do it.

I don't see it transfers over so directly into the context of things like initiatives. I just don't think it's the same issue.

Because the campaign is about creating the wrong relationship with a representative. An initiative is just a position about a particular issue. And I would agree with you, I don't — I'm not moved by

the public interest in understanding who gave what to these initiatives as much as I am moved to try to avoid that quid pro quo that exists in the context of the —

Micah Sifry:

Yeah, but given how much corporations spend on initiatives, isn't it important to know who's spending most of the money on those?

Lawrence Lessig:

Well, you know, maybe that gets us into the line that Adam wants to draw about what's higher. But if you're really worried about — I just can't get animated about the disproportionate stuff, but, you know, other people are.

If you're really worried about that, then let's talk about a very serious number. But, you know, even $500 doesn't strike me as a serious number.

Adam Bonin:

I think you're right about drawing a line between candidate spending and cause spending, because in candidates, we are concerned about what that money can buy, that there's a person out there who's going to be motivated by that money who's going to do different things than they might have if they didn't have that money from you. And it's not the same as a ballot, yes or no.

Micah Sifry:

It's interesting. I disagree. I mean, I think that you ought to have more transparency of who is financing campaigns or initiatives. I think when you spend money in politics, it's an expansive form of speech, and you should know that it comes with — you know, that there's some reciprocal expectation here that people can know who you are and what you're doing.

Lawrence Lessig:

That's the conclusion. Why?

Micah Sifry:

Well, no. I mean, you both seem to be arguing that we should raise the threshold of reporting. And I guess I'm pushing back on that. I think we should lower the threshold. Okay. We only have about 10 minutes left. I know there are lots of questions here so I want to turn to the audience and get some audience participation.

Go ahead. Say who you are and, you know —

Paul Ryan:

Paul Ryan with the Campaign Legal Center. I have a question for professor Lessig. I want to probe into this notion of deregulating the campaign finance arena in the context of financed elections because I think there's a real tension there, first, because participation in those programs will necessarily be voluntary, at least in the manner in which our constitution has presently been interpreted. In that context, some candidates will not be in the system if they are deregulated. I'm wondering whether that will decrease the incentive to opt into the system for other candidates.

And even secondarily, for those candidates who opt into the system, even if they choose to in an otherwise deregulated environment, every public financing program that has been envisioned to date to my knowledge has involved some pretty significant restrictions. So are you talking about deregulating even the rules that would apply to those who participate in, and if you deregulate those outside the system, how does it impact the incentive to get into the system.

Lawrence Lessig:

Yeah, so I agree that the structure of regulation we've got right now is necessary so long as someone's inside of a privately funded campaign system.

So if we have the opt in system of the Durbin/Specter Bill, then people who don't opt in I think still need to be under exactly the same, maybe even better reporting requirements, more efficient reporting requirements, than we've got right now.

For people inside the system, again, I think the regulations have to be narrowly tailored to the interest, and the interest is in maintaining the publicly funded system according to the contours of the system so there is some regulation.

Deregulation — the target for deregulation is not to argue for no regulation, it's to argue for a presumption against the kind of regulation that systematically biases in favor of larger, more established, and against smaller, more grassroots like organizations.

Ellen Weintraub from the FEC, and I want to thank Adam for the shout out on the Internet reg, which I actually did write with Michael Toner. You've got to give fair credit.

My question is what if we changed how much information goes on the public record, not — instead of or maybe in addition to adjusting the threshold, what if we didn't put people's home addresses? And we don't do the phone numbers, but what if we didn't put addresses on there? What if you just had the names.

Because those laws were written before the Internet existed when people had to come into our office building and go sift through the records, so people didn't do it, and people's home addresses, you know, weren't exposed to so many people. Now everybody can get it on their home computers, which is great for transparency, but maybe it's a little bit too much personal information.

Adam Bonin:

I mean, the truth is that the exterior tools are out there, that as long as you have a name and a zip code, that's enough to get everything else. Even if it's not on your site, there are enough other sites that are out there that have that information that if somebody cares enough to link it all up, it's all going to be linked up anyway.

Micah Sifry:

Yeah.

Lawrence Lessig:

Yeah. And, again, I think — so making that point about how these tools, the next generation of these tools is going to be even much better than what we've got right now, that itself, privacy interest here itself, I think, is a strong argument in favor of the citizen funded elections. Right?

You don't tend to weigh the privacy interest very significantly. I do. I don't think it's a fair tax to have to impose on someone to participate in the political system that they then have got to subject themselves to, you know, whatever kind of harassment might come from it.

I'd like to have a political system where we could avoid that. And I think that's what the citizen funded — any version of citizen funded would give us.

Micah Sifry:

I think we have time for maybe one more question, one or two, if they're quick. Yeah?

Jonathan Becker:

Jonathan Becker, Wisconsin Government Accountability Board. It seems to me that the major cost of campaigns is the purchase of television advertising, and I'm wondering if you see the Internet, which is a free medium and an alternative, would ultimately have an effect, together with such phenomenon as TIVO, which allows you to skip through commercials, and a hundred cable channels instead of four networks, whether that all plays into a decreased importance of television and, hence, decreased cost for campaigns.

Lawrence Lessig:

Well, I do think that the availability of free service on the Internet will change that balance. Although we should recognize, according to Slade, at least, you know YouTube is losing a million and a half dollars a day. So the long term viability of this model is not yet established in anybody's mind.

I also think another hugely significant cost is the cost of running professional campaigns. So that's consulting fees and that's also, you know, polling costs and things like that which, again, would be reduced significantly I think if we saw more free software in this space, if we saw more, smarter technologies for gathering that information. And that would be just as important in supporting those grassroots politics as lowering television costs.

Adam Bonin:

I mean, the thing about, you know, television advertising for campaigns is that it allows you to reach people who aren't otherwise paying attention and who don't care, you know, on a mass level to push information that's out there. Websites are so fragmented that even if you're going at sort of non partisan newspaper websites, you're still not reaching people who don't read the newspaper that way.

So television is still going to be a part of this even after TIVO. And the problem with political campaigns as opposed to other products that advertise on television is that they can't do product placements in shows. You know, while Grey's Anatomy can decide one week to have each one of their characters drinking Coca Cola and talking about how great and refreshing their Coca Cola is, they're not going to be walking around talking about what a great candidate for senate Bob Casey is. It's not very entertaining.

So there's always going to be — campaigns are always going to be looking for some kind of space to push their message out to people who aren't paying attention. It's going to be television, even in the age of TIVO, for a damn long time because there's no place on the Internet that gets you that kind of mass attention at once.

Micah Sifry:

Well, actually, I'm going to add one little wrinkle and then unfortunately we're out of time, because there's so many things we could talk about.

The micro targeting and nano targeting using contextual advertising is still in its early days, and we're all experiencing it now. If you use Gmail, for example, and you ever wonder about those ads that appear alongside your email, let me give you a fun experiment.

Send yourself an email with the words “act blue,” “act blue newsletter,” just in the body of the email. Okay? And what will come up when you receive that email are all the people who have purchased sponsored ads to appear alongside anybody receiving an email from ActBlue, ActBlue being the big small donor aggregator for Democratic candidates.

I did this the other day. I did this the other day. I was entertained to discover that Terry McAuliffe was prospecting for donors.

Now, you might say there's nothing wrong with that. If I'm a subscriber to the ActBlue newsletter, maybe I really do want to hear from Democratic candidates. But the targeting potential of the

Internet, which we haven't spent much time talking about at all, I think a lot of political campaigns are going to get very sophisticated about this over the next few years as they look for ways to deal with the fact that they can't get everybody who used to watch television. So the frontier — you know, it's going in a lot of very interesting directions.

I'm afraid we're out of time. I feel like we only skirted the surface on a lot of these issues. I wish we could spend more time.

Read Larry's blog, read Adam on Daily Kos, come to Personal Democracy Forum, and let's continue the conversation.

Thank you.