

OPEN DATA'S IMPACT

EIGHTMAPS.COM

The unintended negative consequences of open data



By Auralice Graft, Stefaan Verhulst and Andrew Young

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Dimension of Impact

- ✓ Solving Public Problems
- ✓ Data-Driven Engagement

Summary

In 2008, voters in California were presented with a choice regarding the legal right of same-sex couples to marry. Proposition 8, which passed successfully on November 4, 2008, made same-sex marriage illegal in the state. Given the strong opinions on both sides of the issue, it is not surprising that debate did not conclude after the final ballot was counted. In 2009, the anonymous creator(s) of Eightmaps.com launched a tool providing detailed information on supporters of Prop 8. The site collected information made public through state campaign finance disclosure laws and overlaid that information onto a Google map of the state. Through Eightmaps, users

could find the names, approximate locations, amount donated, and, where available, employers of individuals who donated money to support Prop 8 and stop same-sex marriage in the state. While the site is no longer live, and a federal court eventually found Prop 8 unconstitutional in 2010, Eightmaps demonstrates how the increased computability and reusability of open data – especially data related to contentious issues like same-sex marriage – might be used in unexpected ways that not only create major privacy concerns for citizens, but could also lead to harassment and threats based on political disagreements.

Key Takeaways

- Open data efforts, especially those that involve individual-level information, have the potential for unintended consequences in the form of negative impacts to citizen privacy.
- Legislation focused on transparency and accountability passed prior to the rise of the Internet could have insufficient safeguards for privacy, given that today's data analysis and computation capabilities could not have been predicted to reach the current level even throughout the late 1990s and early 2000s.
- Accessible public data can be mashed up with other data sources using free tools to create new insights and public impacts. In some cases, those impacts are positive and create new value to users. In others, the results can be more troubling.

I. CONTEXT AND BACKGROUND

In the interest of creating transparency and accountability in the political process and around political messaging, among other reasons, the U.S. government today publicly discloses personal information about voters through two different data sets: those for voter data and those for campaign finance. Voter data sets are created when citizens register to vote. The type of data required varies to some extent by state. The state of California, where the case under consideration occurred, requires that voters provide their name, address, party affiliation, previous residence and signature, among other information. Aside from a citizen's signature, this data is readily accessible online. Some other states require the submission of a formal request to access such data. Campaign finance data sets on the other hand, are compiled and disclosed by campaigns that are required to file data about donors who give over a certain amount in support of that candidate or referenda. As with voter data, the type of data required to be disclosed also varies by state. In California, which is known to have likely the strongest campaign finance disclosure laws in the country,¹ a donor's name, address, occupation and employer are required. The donation threshold over which disclosure is mandated is currently \$100 in California, with campaign finance data available on the California Secretary of State's website.² Anyone with access to the Internet can view it online or download it as a Microsoft Excel file.³ A more detailed report including donors' complete addresses (which is redacted

1 Alexander, Kim. "Initiative Disclosure Reform: Overview and Recommendations." Greenlining Institute. June 16, 2011. <http://www.calvoter.org/issues/disclosure/pub/greenliningpaper.pdf>

2 cal-access.sos.ca.gov/

3 Messner, Thomas M. "The Price of Prop 8." Heritage Foundation. October 22, 2009. <http://www.heritage.org/research/reports/2009/10/the-price-of-prop-8>

from the online display) can also be accessed by submitting a signed request to the California Secretary of State's office, at which point it is delivered on a CD. Large data users, like news organizations, can also access a live online feed following the completion of an agreement with the Secretary of State's office.

Legal Foundation of Campaign Finance Data Disclosure Laws in California

Written in the 1970s as an outgrowth of the Watergate scandal, California's campaign finance disclosure laws built upon earlier requirements to provide just the names of donors openly to the public. Then a movement gained steam to ensure that the public remain fully informed, and that improper practices (like those relating to the Watergate scandal) be prohibited by the enactment of new disclosure laws. California's current Governor Jerry Brown who was secretary of state at the time, and Bob Stern of the Center for Government Studies, among others, wrote California's Political Reform Act of 1974, which required that all candidates disclose the name, address, occupation and employer for every donation over the threshold – which at the time was \$50. Information must be filed for donations toward candidates (to limit the potential for corruption) as well as donations toward issues and referenda (to help voters know who supports what, which in turn helps them make informed political decisions).⁴ The law stipulates that disclosure must be made in an itemized, timely manner, and include all contributions and expenditures. It also prohibits anonymous contributions and contains a regulatory framework imposing penalties for failure to comply. Kim Alexander of the California Voter Foundation recalls, "Writing and passing the law was done through the initiative process, so the language was very voter focused in terms of people having the right to be informed."⁵

Electronic Filing

Initially, after disclosure laws were enacted, campaign finance data was filed on paper and housed in filing cabinets and accessible at the Secretary of State's office. However, in the decades that followed, it became increasingly clear to many who were familiar with this data that it should be digitized. Alexander, who worked to change laws to require that reports be filed electronically, says, "It was clear there was so much more to be learned about what was going on in campaign finance if campaign finance records were computerized."⁶ The first bill was drafted in 1995, and the final bill enacted in 1997. The 1997 bill states that candidates' disclosure records have to be filed online: "This bill would require the secretary of state to develop a process whereby reports and statements that are required under the act to be filed with the secretary of state could be filed electronically and viewed by the public at no cost on an online disclosure system by way of the largest nonproprietary, cooperative public computer

4 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

5 Alexander, Kim. "Initiative Disclosure Reform: Overview and Recommendations." Greenlining Institute. June 16, 2011. <http://www.calvoter.org/issues/disclosure/pub/greenliningpaper.pdf>

6 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

network.”⁷ California was among the first states to pass these electronic filing laws.⁸ Alexander recalls, “I was very aware of the fact that if California did pass this law, it would be seen as a ‘bellwether’ kind of act that other states would likely copy. Because we’re California, we have a lot of influence in the rest of the country.”⁹ San Francisco was the first jurisdiction to enact and implement an electronic filing law, in 1993 and 1995, respectively.¹⁰

Privacy Concerns of Electronic Filing

People like Kim Alexander of the California Voter Foundation were adamant advocates of electronic filing, but were also aware that digitization could have negative consequences in terms of privacy. She recalls, “We didn’t want to create a process where people who had the right to speak with their dollars – as the U.S. Supreme Court has affirmed they can – felt that right was being denied because their personal information was disclosed to a wide audience; that there shouldn’t be this price they would pay.”¹¹ This was in the mid-1990s, before the meteoric rise of the Internet. At the time, campaign finance data reports were provided on CDs or floppy disks. Electronic filing on the Internet as per campaign disclosure laws only began in 2000. From the beginning, stakeholders had a sense that there were potential security threats related to the electronic filing, but not to the extent that became possible after the rise of the Internet. To calm security concerns, the final version of 1997 bill required that donors’ addresses be redacted from the online display. Candidates still had to file addresses as part of their reports – so they were included in the formal record – but they were not viewable on secretary of state’s website. Donor addresses were still publicly available but digital access to them required a special, signed agreement with secretary of state’s office. The paper records, however, continue to be filed with the secretary of state and are made publicly accessible free of any redaction.¹²

California’s Proposition 8

Proposition 8 was a California state constitutional amendment created by opponents of same sex marriage forbidding the licensing or recognition of same sex marriages in California. The proposition was titled the “California Marriage Protection Act,” and read: “Only marriage between a man and a woman is valid or recognized in the State of California.”¹³ Proposition 8 was preceded by Proposition 22 which was adopted in 2000 as an ordinary statute with exactly the same wording as Proposition 8. Proposition 22 was invalidated on constitutional grounds at the U.S. Supreme Court level in 2008. Proposition 8 replaced it as a state constitutional amendment and was passed in 2008 California state elections with a vote of 52-48 percent. It was subsequently ruled as unconstitutional by a federal court in 2010.

7 Senate Bill No. 49, Chapter 866.

http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_0001-0050/sb_49_bill_19971011_chaptered.pdf

8 Alexander, Kim. “Initiative Disclosure Reform: Overview and Recommendations.” Greenlining Institute. June 16, 2011.

<http://www.calvoter.org/issues/disclosure/pub/greenliningpaper.pdf>

9 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

10 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

11 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

12 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

13 http://www.ag.ca.gov/cms_pdfs/initiatives/i737_07-0068_Initiative.pdf

The Proposition 8 campaign was extremely polarized. Supporters and opponents alike felt passionate about its outcome and significance. While supporters argued vehemently that marriage should be reserved for men and women, opponents felt equally strongly that California's constitution should, as the legal document argues, "guarantee the same freedoms and rights to everyone," and that "no one group should be singled out to be treated differently."¹⁴ In many cases, voters iterated their beliefs and sentiments with donations. Kim Alexander notes that "there was *a lot* of money spent on both sides of this initiative. It was one of the most expensive initiatives we've ever seen [in California]."¹⁵ The LA Times described it as the "state's costliest initiative," reporting that a total of more than \$83 million was raised on both sides.¹⁶

Donors to the Proposition 8 campaign experienced widespread intimidation and public shaming, led in large part by a group called Californians Against Hate. This group's stated mission was to "fight back" against those supporting Proposition 8 by letting "the world know who donors [to the proposition] are."¹⁷ Their website listed people and organizations who had contributed \$5,000 or more to the campaign. That list included individuals' addresses, which were publicly available as a result of campaign finance laws, as well as phone numbers and website addresses – information that is not included in the publicly accessible data, but rather collected manually through research on identified individuals. The group, and others affiliated to it – including BoycottManchesterHotels.com and BoycottA1SelfStorage.com – also organized boycotts against very large donors, including a hotel owner who contributed \$125,000 to Yes on Proposition 8, and a storage company whose owners donated \$700,000. As a result of these efforts, in some cases people lost their jobs due to their support for the proposition.¹⁸

Kim Alexander echoes a widely held opinion in California and beyond, "Voters should have never been asked to decide Proposition 8 in the first place. Now we know in hindsight that it was an unconstitutional proposition. People were in a fight over constitutional rights, and that's part of the reason why there was so much passion. That's why it was so contentious. In hindsight, we can say it should never have gone before the voters in the first place."¹⁹

14 California General Election – Official Voter Information Guide. November 4, 2008. <http://vigarchive.sos.ca.gov/2008/general/argu-rebut/argu-rebutt8.htm>

15 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

16 "Proposition 8: Who gave in the gay marriage battle?" Los Angeles Times. <http://projects.latimes.com/prop8/>

17 <http://www.californiansagainsthate.com/>

18 Richardson, Valerie. "Pestered Prop 8 donors file suit." The Washington Times. March 23, 2009. <http://www.washingtontimes.com/news/2009/mar/23/pestered-prop-8-donors-file-suit/?page=all>; "Boycotts related to California Proposition 8." BallotPedia. http://ballotpedia.org/Boycotts_related_to_California_Proposition_8

19 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

II. PROJECT DESCRIPTION AND INCEPTION

Californians Against Hate targeted larger donors to Proposition 8. But several websites showed less restraint, including Eightmaps.com. Launched in early 2009 by opponents of Proposition 8, the creators of Eightmaps – also known as “Prop. 8 Maps” – took the publicly available names and address information of anyone who had given more than \$100 to the campaign and “mashed it” (i.e., overlaid it) with Google maps to provide an electronic map to the residences and workplaces of those donors. Gawker – a media outlet that at times traffics in uncomfortable levels of transparency²⁰ – called it an “icon for the extremes to which political transparency can be taken.”²¹

Eightmaps.com is no longer available online, but an archive search brings up some of its pages (See Figure 1 below). There, a headline announces “Prop 8 Maps: A mash-up on Google Maps and Prop 8 Donors,” and “Proposition 8 changed the California state constitution to prohibit same-sex marriage. These are the people who donated in order to pass it.” The site displays a Google map that apparently used to depict markers indicating contributors’ names, approximate location, amount contributed, and, if available, their employer (these markers are no longer available in the archived version). The site provides the option to view maps in San Francisco, Salt Lake City and Orange County.²²

It is not clear when exactly Eightmaps was launched or when or how the wider public first began realizing it existed. But beginning the week of February 9, 2009, it was covered widely in the U.S. media. Articles about it appeared in many major newspapers, including *The New York Times*,²³ the *Los Angeles Times* and the *San Francisco Chronicle*, as well as in blogs and other news sources. Reactions varied from concern about negative outcomes to praise for the idea. Referencing Eightmaps, one headline asked, “Google Map: Intimidation or Conversation Starter?”²⁴

The New York Times wrote that Eightmaps revealed a darker side of transparency laws: “Eightmaps.com is the latest, most striking example of how information collected through disclosure laws intended to increase the transparency of the political process, magnified by the powerful lens of the Web, may be undermining the same democratic values that the regulations were to promote.” This could lead to citizens becoming discouraged from participating in the political process, the article pointed out.²⁵

A blogger for the *Dallas Morning News* saw Eightmaps as “a terrible development,” and worried about the threat to Proposition 8 donors’ privacy. “Given that there has been harassment by

20 Roy, Jessica. “Gawker Slammed for Story Outing Condé Nast Exec.” *New York Magazine*. July 17, 2015.

<http://nymag.com/the-cut/2015/07/gawker-slammed-for-story-outing-conde-nast-exec.html>

21 Tate, Ryan. “Map of Anti-Gay Donors Created by Big Chicken.” *Gawker*. February 8, 2009.

<http://gawker.com/5149276/map-of-anti-gay-donors-created-by-big-chicken>

22 <http://web.archive.org/web/20090302143108/http://www.eightmaps.com/>

23 Stone, Brad. “Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword.” *The New York Times*. February 7, 2009.

http://www.nytimes.com/2009/02/08/business/08stream.html?_r=0

24 “Google Map: Intimidation or Conversation Starter?” *WND*. February 11, 2009. <http://www.wnd.com/2009/02/88616/>

25 Stone, Brad. “Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword.” *The New York Times*. February 7, 2009.

http://www.nytimes.com/2009/02/08/business/08stream.html?_r=0

gay radicals of people who supported Prop 8, it is potentially dangerous that it's now easy to find your way to the homes of these donors – even small donors,” they opined.²⁶

Others saw the effort as justified, and suggested that it gave Proposition 8 donors what they deserve. The SFist.com blogged:

“Is this a witch hunt? No. Is it cruel? A bit, maybe. But aren't the 36,000 people whose marriages risk nullification entitled to know which of their neighbors paid to force them into divorce? Criminals are entitled to face their accusers in court. why can't married couples know who's funding their forced divorces? And do the yes-on-8 people REALLY want to play the 'who's a bigger victim' game with the gays? No.”²⁷

Another blogger described the site as “an interesting convergence ... between information technology and election donor transparency,” arguing that: “The laws in California are clear: donate enough and your name goes public. If the filth who donated to support institutionalized bigotry are truly proud of themselves, this shouldn't be a problem for them. Keep in mind Eightmaps doesn't expose everyone who voted for Prop 8, only those who donated enough that they tripped California's public disclosure laws. Well, you get what you pay for.”²⁸

The creators of eightmaps.com remain anonymous and made no statements about the site. They also refused all requests to be interviewed. This makes it impossible to know about project inception. No major efforts to unmask the creators were mentioned in the media, though many have observed the irony of the creators' choice to remain anonymous, given the full-disclosure nature of the website.²⁹ Gawker referred to them at the time as “Big Chicken[s],” stating that “when the people behind a public shaming tool insist on lurking in the shadows, they cover their particular tactical effort in a veneer of slime.”³⁰

26 “Eightmaps.com and too much information.” The Dallas Morning News. January 14, 2009.

<http://dallasmorningviewsblog.dallasnews.com/2009/01/eightmapscom-an.html/>

27 Keeling, Brock. “Map of Prop 8 Donors.” SFist. January 9, 2009.

http://sfist.com/2009/01/09/mash-up_map_of_google_maps_and_prop.php

28 “Exposing bigots: eightmaps.com.” The Planetologist. February 14, 2009.

<https://planetologist.wordpress.com/2009/02/14/exposing-bigots-eightmapscom/>

29 Lincoln, Ross A. “Eightmaps.com: Hypocritical Privacy Violation, or Reverse-Super Judo?” LAist. February 19, 2009. http://laist.com/2009/02/19/for_people_concerned_that_the.php

30 Tate, Ryan. “Map of Anti-Gay Donors Created by Big Chicken.” Gawker. February 8, 2009.

<http://gawker.com/5149276/map-of-anti-gay-donors-created-by-big-chicken>

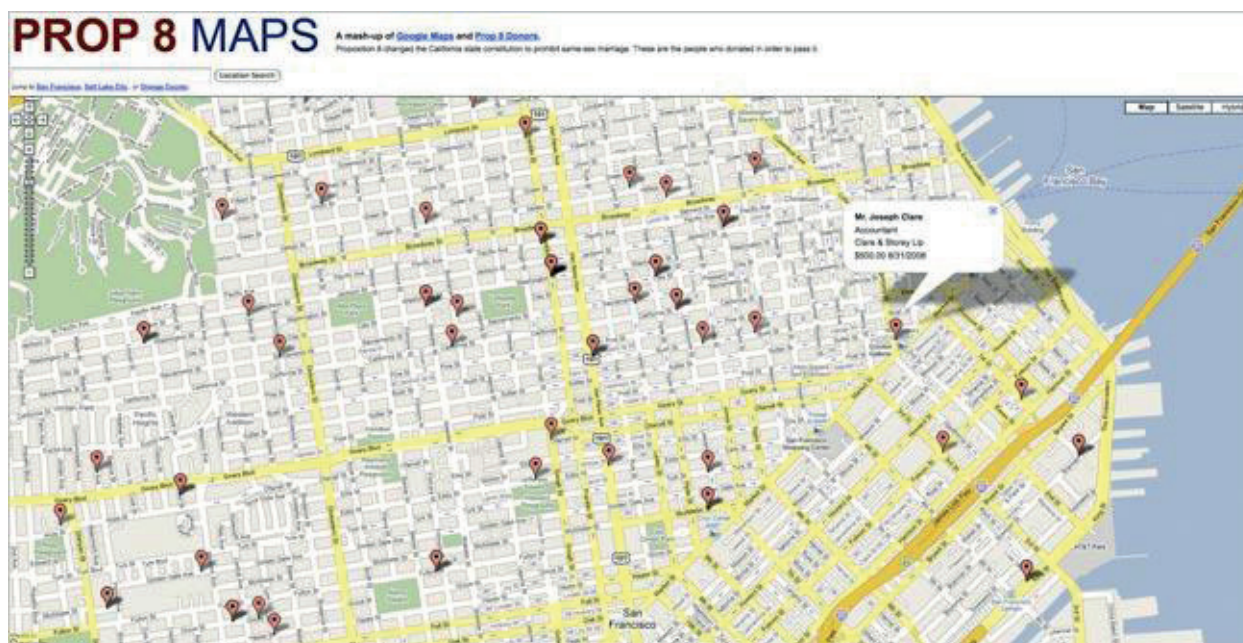


Figure 1. Screenshot of eightmaps.com. Image copied from the New York Times³¹

III. IMPACT

The impact of the Eightmaps project was significant. It began with widespread media coverage and, importantly, a public debate on transparency in political donations – both arguably positive outcomes. Not surprisingly, other impacts were not as positive.

Harassment of Proposition 8 Donors

Many donors to Proposition 8 began experiencing threats, vandalism, intimidation and property destruction in the weeks and months after Eightmaps was launched – though whether or not their information was obtained from Eightmaps or other similar sources cannot be confirmed. Some reported receiving envelopes containing white powder. *The Washington Times* quoted Charles LiMandri, a Proposition 8 supporter who lived in San Diego as having begun to receive unexpected correspondence after Eightmaps. “I got about two dozen emails and hate phone calls,” Mr. LiMandri was quoted as saying.³² Others received messages like “Burn in Hell,” “Consider yourself lucky,” and “If I had a gun I would have gunned you down along with each and every other supporter.”³³ Other Proposition 8 donors reported being pushed out of their

31 Stone, Brad. “Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword.” *The New York Times*. February 7, 2009. http://www.nytimes.com/2009/02/08/business/08stream.html?_r=0

32 Richardson, Valerie. “Pestered Prop 8 donors file suit.” *The Washington Times*. March 23, 2009. <http://www.washingtontimes.com/news/2009/mar/23/pestered-prop-8-donors-file-suit/?page=all>

33 “Google Map: Intimidation or Conversation Starter?” *WND*. February 11, 2009. <http://www.wnd.com/2009/02/88616/>

jobs following the release of their donation activity.³⁴

The result was a potential chilling effect on some donors' sense of safety. While the Californians Against Hate website had also provided donors' names and addresses, these were for a smaller number of people (because of the higher threshold) and Eightmaps took things one step further by actually depicting addresses, along with other information about the donor, on a map. Alexander of the California Voter Foundation said, "This idea of giving people a map to someone's home is a way of inviting widespread attack on that person. When you put that on the Internet, you are literally providing an invitation or suggestion that people go to this person's home and confront them. This was threatening on an exponential level."³⁵

This chilling effect was largely the result of Eightmaps mashing up of publicly accessible and manually collected data. While individual-level voter and political donor data has been available to the public for years, mashups were far from the norm even late into the 00s. "In 2008 [just before Eightmaps launched], people weren't doing that with the Internet," said Kim Alexander.³⁶

In this way, Eightmaps was an important, thought-provoking lesson for open data advocacy. Advocates had argued tirelessly about the benefits of disclosure, about the possibility for limiting corruption and of informing voters. But they had not perhaps considered the extent to which outcomes could be negative as well. Alexander notes, "It's really hard when you're an open data advocate to consider all the potentially negative things that can be done."³⁷ These risks are, of course, magnified dramatically by the Internet. "We realized that when you make data available to everyone [on the Internet], that means *everyone*."³⁸

Threats to Free Speech

Projects like Eightmaps can also threaten free speech by undermining disclosure laws. On January 8, 2008, prior to the believed date of Eightmaps' launch, a federal lawsuit was filed by James Bopp that argued California disclosure laws should be changed so candidates would no longer be required to report information on Proposition 8 donors. Much of the case was built on testimony of those who had felt threatened in the wake of Proposition 8, and subsequently demanded that the disclosure law be thrown out or donors' names shielded as a result of retaliation against some contributors. "Certainly the state has an interest in requiring disclosure," said Richard Coleson, an attorney representing the plaintiffs, Protect Marriage, "but there has to be an exception when there is a reasonable probability of reprisal."³⁹ The case went before U.S. District Judge Morrison England in November 2008, and was denied. "If there ever needs to be sunshine on a particular issue, it's a ballot

34 Richardson, Valerie. "Pestered Prop 8 donors file suit." The Washington Times. March 23, 2009. <http://www.washingtontimes.com/news/2009/mar/23/pestered-prop-8-donors-file-suit/?page=all>

35 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

36 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

37 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

38 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

39 "Prop 8 Donors: Find Out Who Backed California's Anti-Gay Marriage Amendment." The Huffington Post. May 25, 2011. http://www.huffingtonpost.com/2009/02/02/prop-8-donors-find-out-wh_n_163234.html?ir=India&adsSiteOverride=in

measure,” he concluded, emphasizing the continued need for transparency on issues such as the Proposition 8 measure. He also said that illegal reprisals resulting from online databases – like those available on Eightmaps the following year – while “repugnant and despicable,” could be dealt with by law enforcement, without giving donors additional legal protection.⁴⁰

Activism Around Gay Rights

Not everyone focused on the negative impacts of Eightmaps. Some saw its impact to be positive, particularly in terms of activism around gay rights. Opponents of Proposition 8 were thrilled to see what they saw to be supporters of discrimination (by opposing gays’ right to marriage) targeted and boycotted.⁴¹ Erica Anderson, of the Erica-America.com blog was quoted in the MTV newsroom as saying “With Eightmaps, the gays are fighting back, and I say good for them, good for us. This tool is a perfect example of democracy meeting Web 2.0 – in a thoughtful, productive way.”⁴²

Californians Against Hate founder Fred Karger was propelled into gay rights activism by his fight against Proposition 8: “Our opponents want to send a message to all of us that we are second-class citizens, who are not entitled to the same rights as our mothers and fathers, brothers and sisters, aunts, uncles, co-workers, neighbors and our friends who happen to be straight. This will not deter me. I will continue to bring attention to those companies and individuals who spend millions and millions of dollars to stop us from attaining full and equal civil rights,” he wrote in a September, 2009 *Huffington Post* piece.⁴³

This impact on gay rights was not limited to the immediate period around the launch of Eightmaps, but has snowballed into more permanent changes in national cultural attitude – particularly in terms of Silicon Valley and the world of information technology. Five years after Eightmaps, in 2014, Mozilla CEO Brendan Eich was forced to resign days after assuming the position when he was outed as having donated \$1,000 to support Proposition 8 back in 2008. His company’s Firefox Web Browser faced boycott threats as a result of that support and he resigned saying, “Under the present circumstances, I cannot be an effective leader.” The *SFGate* newspaper quoted Frank Schubert, a political consultant who ran the Prop. 8 campaign, as saying “There’s now no place in current society for holding a view that people have held for thousands of years.”⁴⁴

Not everyone was pleased with Eich’s predicament. Gay activist and commentator Andrew Sullivan blogged that he was disgusted by the episode, saying, “If this is the gay rights

40 Egelko, Bob. “Prop. 8 campaign can’t hide donors’ names.” SFGate. January 30, 2009.

<http://www.sfgate.com/bayarea/article/Prop-8-campaign-can-t-hide-donors-names-3174252.php>

41 GovLab interview with Daniel Kreiss, Assistant Professor, University of North Carolina School of Journalism and Media, September 18, 2015.

42 Stolz, Kim. “Are Prop 8 Opponents Using EightMaps.com for the Right Reasons?” MTV News. February 10, 2009.

<http://newsroom.mtv.com/2009/02/10/are-prop-8-opponents-using-eightmapscom-for-the-right-reasons/>

43 Karger, Fred. “Fighting for Civil Rights Has Consequences.” The Huffington Post. November 21, 2009.

http://www.huffingtonpost.com/fred-karger/fighting-for-civil-rights_b_294273.html?ir=India&adsSiteOverride=in

44 Wildermuth, John. “Mozilla’s Prop. 8 uproar reveals much about tech, gay rights.” SFGate. April 11, 2014.

<http://www.sfgate.com/politics/article/Mozilla-s-Prop-8-uproar-reveals-much-about-tech-5393875.php>

movement today – hounding our opponents with a fanaticism more like the religious right than anyone else – then count me out.”⁴⁵

Transparency vs Privacy

Not surprisingly, the voices in support of Eightmaps are less prevalent than those who are troubled by the potential for other negative outcomes, regardless of their political leanings or feelings about gay marriage in particular. Concern about a preponderance of threats and intimidation and particularly about destruction of privacy govern much of the discussion in the wake of the Eightmaps case. In fact, this issue is really the crux of the case. How to mitigate the tension between the need for transparency in voter and campaign finance data with the need to protect citizens’ privacy? At what point does one need become more important than the other? We explore these questions in the next section on Challenges.

IV. CHALLENGES

A primary outcome of the case of Eightmaps is the challenge of how to balance the sometimes competing goals of transparency and privacy. This can also be framed as the right to speak with one’s dollars versus the right to be informed about who is funding campaigns – rights the U.S. Supreme Court has said are vital to the decision-making process in the states that have it.⁴⁶ At what point does one right become more important than the other?

Transparency and privacy compete against each other in several domains of the law. For example, in domains that relate to court records or community notification laws for sex offenders. The Eightmaps case shows how campaign finance laws are another domain. On the one hand, individual privacy is considered important because, as one journal article puts it, “the secret ballot and associational privacy are at stake.”⁴⁷ On the other hand, public interests such as the need to limit corruption and keep citizens informed can outweigh the importance of privacy.⁴⁸ Also to be considered are the dangers of threatening individuals’ sense of privacy and security, one of which is that it might inhibit them from participating in political life.

These tensions are an unintended outcome of transparency laws. “I don’t think the law was designed to identify people for direct feedback to them from others on the other side,” Joseph

45 Wildermuth, John. “Mozilla’s Prop. 8 uproar reveals much about tech, gay rights.” SFGate. April 11, 2014. <http://www.sfgate.com/politics/article/Mozilla-s-Prop-8-uproar-reveals-much-about-tech-5393875.php>

46 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

47 Johnson, Deborah G., Priscilla M. Regan and Kent Wayland. “Campaign Disclosure, Privacy and Transparency.” William & Mary Bill of Rights Journal, Vol. 19, No. 4. 2011. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1585&context=wmborj>

48 Johnson, Deborah G., Priscilla M. Regan and Kent Wayland. “Campaign Disclosure, Privacy and Transparency.” William & Mary Bill of Rights Journal, Vol. 19, No. 4. 2011. <http://scholarship.law.wm.edu/cgi/viewcontent.cgi?article=1585&context=wmborj>

Clare, a San Francisco accountant, was quoted as saying in *The New York Times*, “I think it’s been misused.”⁴⁹ They are certainly questions that have been brought to the fore by the advent of the Internet. Disclosure laws were written before the Internet, when donors’ information resided in government filing cabinets and would largely be inaccessible to many people. “Nobody anticipated when the laws were initially written that reports were going to be widely accessible to everybody in the world,” says Alexander of the California Voter Foundation, who helped update disclosure laws. “Identity theft was not an issue at the time. It didn’t matter so much if people knew your address – there was not much they could do with it. Now you can do things like mash it up with other data – which is what happened with Eightmaps,” she said.⁵⁰

These concerns also do not resound with everyone. For example, Daniel Kreiss, who studies the impact of technological change on the public sphere and political practice, and was aware of Eightmaps at the time of launching, did not share concerns about its privacy outcomes. While condemning any speech or activity intended to silence or harm another person, Kreiss also indicates that there is no empirical evidence of people voting less or being less politically active because of laws requiring that their political donation data being made public – or as a result of privacy concerns. Kreiss is far more concerned about transparency in terms of how political data is used by third-party data processing entities – for example, by Super PACs. He feels it is ironic that there is more talk about transparency in terms of the information the government collects than about such third-party efforts to use that data. To Kreiss, projects like Eightmaps are both “a valuable tool,” and also par for the course in a democratic system. “Outcomes like Eightmaps are part and parcel of participating in political life. If we’re going to say that money is speech and there is going to be transparency and accountability for what we say, then we also have to accept the consequences of our actions. If you are going to donate to a cause, you should expect there may be consequences like this,” he said.⁵¹

Ira Rubinstein, who writes about privacy and big data, agrees. Rubinstein doesn’t believe voter privacy is so important once a citizen gets to the stage of their political life where they are voting or donating to causes. He does think citizens need privacy in the earlier, more formative stages of their political lives. “At that stage they need space of quiet reflection for formatting their own positions,” he said. “But once a person takes that step toward supporting or opposing something that has a clear public face, that person has entered the realm of politics” and has to recognize what that means in terms of possible outcomes, he said.⁵²

Rubinstein does, however, think the U.S. tilts too far in favor of transparency and away from privacy, at least in the context of small-donor donations. Rubinstein also reiterates Kreiss’ concerns about a lack of transparency around larger political donations. “The problem is that big

49 Stone, Brad. “Prop 8 Donor Web Site Shows Disclosure Law Is 2-Edged Sword.” *The New York Times*. February 7, 2009. http://www.nytimes.com/2009/02/08/business/08stream.html?_r=0

50 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

51 GovLab interview with Daniel Kreiss, Assistant Professor, University of North Carolina School of Journalism and Media, September 18, 2015.

52 GovLab interview with Ira Rubinstein, Research Fellow and Adjunct Professor of Law at New York University, September 14, 2015.

money gets to shield who donors are – through Super PACs and other similar entities – whereas small donors have to say who they are.”⁵³

V. LOOKING FORWARD

To help mitigate the potentially negative impacts of political data disclosure, a few strategies could be considered.

Raising the Itemized Disclosure Threshold

By raising the threshold after which in-depth disclosure must occur, people could take an active role in certain pieces of political life without being concerned about potentially threatening activity happening as a result. Rubinstein and Alexander, for example, argue that there is no strong reason not to raise the minimum given the high potential to improve privacy with a very small likelihood of negative impacts on anticorruption efforts. Others, like Kreiss, see little justification in restricting the collection and transparency of political donation data, given an individual’s conscious decision to play a part in political life.⁵⁴

Thresholds do create additional challenges, however. Alexander and the California Voter Foundation found that many campaigns itemize contributions at \$99 – just below the threshold for public disclosure.⁵⁵ As a result, the foundation recommended that the Fair Political Practices Commission enforcement agency more aggressively monitor and fine campaigns intentionally obscuring donor information that, by law, should be made public.⁵⁶

Placing New Safeguards on Downloads of Donor Information

While maintaining transparency, states could consider putting new safeguards onto their campaign activity and disclosure databases to help avoid threats to privacy. By asking for, for example, a valid form of identification before allowing for the bulk download of individual-level donor data, users with malicious intent could reconsider and/or the proper authorities could more easily address any illegal activities enabled by access to the data.

Better Transparency About How Data Is Used by Political Campaigns and Other Actors

The question of transparency versus privacy is perhaps of greatest concern not so much when it comes to cases like Eightmaps that use government-collected citizen data, but when it comes to what Ira Rubinstein calls “enhanced political data.” This data is what Rubinstein calls “more granular”: It is founded on government-collected voter data and then enhanced by a combination of data from commercial brokers as well as historical participation data that a party

53 GovLab interview with Ira Rubinstein, Research Fellow and Adjunct Professor of Law at New York University, September 14, 2015.

54 GovLab interview with Daniel Kreiss, Assistant Professor, University of North Carolina School of Journalism and Media, September 18, 2015.

55 Alexander, Kim. “Testimony at Public Hearing of the Fair Political Practices Commission’s Subcommittee on the Political Reform Act & Internet Political Activity.” March 17, 2010. <http://www.calvoter.org/issues/disclosure/pub/031710KAremarks.html>

56 GovLab interview with Kim Alexander, President and Founder of the California Voter Foundation, September 16, 2015.

or candidate gathers over time. Political campaigns and parties have created such mashups for decades, but the ability to create them has expanded greatly in recent years. Such data offers more insight into citizens' profiles and preferences, and is not available to the public at all. It is used and swapped by political campaigns and other actors to target the electorate. Daniel Kreiss feels there is "an alarming lack of transparency" here.⁵⁷ Alexander, Rubinstein and Kreiss all emphasize a need to require that entities trading in this data to be more accountable and explicit about how they're using it.⁵⁸

After Proposition 8 was found unconstitutional by the U.S. Supreme Court in 2010, much of the public memory has moved past the fractious debates of 2008 and 2009. And while marriage equality is now the law of the land, and Eightmaps is no longer accessible to the public, the questions and debates it raised about balancing transparency and privacy in the realm of individual-level political activity remain.

57 GovLab interview with Daniel Kreiss, Assistant Professor, University of North Carolina School of Journalism and Media, September 18, 2015.

58 "Voter Privacy in the Digital Age: Recommendations." California Voter Foundation. June 9, 2004. <http://www.calvoter.org/issues/votprivacy/pub/voterprivacy/recommendations.html>