

**RSC Policy Brief:**  
**The DISCLOSE Act**  
June 16, 2010

**On the Citizens United decision: "This is a defeat for arrogant elitists who wanted to carve out free speech as a privilege for themselves and deny it to the rest of us; and for those who believed that speech had a dollar value and should be treated and regulated like currency, and not a freedom. Today's decision reaffirms that the Bill of Rights was written for every American and it will amplify the voice of average citizens who want their voices heard."**

*- Wayne LaPierre, National Rifle Association, January 21, 2010*

**"The proposals in the 'DISCLOSE Act' (Democratic Incumbents Seeking to Contain Losses by Outlawing Speech in Elections) amount to nothing more than political posturing...This bill would create another bureaucratic layer of political speech regulation, which would punish small business owners and grassroots groups who lack the resources to comply with such onerous provisions."**

*- Bradley Smith, Center for Competitive Politics Chairman and Former FEC Commissioner, 2000-2005*

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On April 29, 2010, Congressman Chris Van Hollen (D-MD) introduced H.R. 5175, the Democracy is Strengthened by Casting Light on Spending in Elections (DISCLOSE) Act. The bill is a direct response to *Citizens United v. Federal Election Commission* – a First Amendment victory in which the Supreme Court overturned the prohibition on corporations and unions using treasury funds for independent expenditures supporting or opposing political candidates at any time of the year. Simply put, the DISCLOSE Act will limit the political speech that was protected and encouraged by *Citizens United*.

The DISCLOSE Act was marked up on Thursday, May 20, 2010, and may come to the floor later this week after rumors that the Democrats have reached an agreement with certain key groups. *This is not meant to be an extensive analysis – which will be provided in the Legislative Bulletin once the bill comes to the floor – but rather to highlight some of the most egregious provisions of the bill.*

**Partisan ploy to get Democrats elected to Congress.** The bill, “coincidentally” sponsored by the chairman of the Democratic Congressional Campaign Committee in charge of electing Democrats to Congress, re-writes campaign finance laws in favor of Democrats right before elections. It was crafted behind closed doors with no input from Republican members of the House Administration Committee. The bill was designed by Democrats to silence their political opponents.

**Creates a special, narrow carve-out for specific organizations intended to sway votes toward passage of the bill.** The National Rifle Association (NRA), the Humane Society, and possibly a very small number of other groups, are reportedly covered in a last minute deal that creates an exemption from the financial disclosure requirements in the bill. This carve out does nothing to protect the First Amendment rights of

millions of Americans who want to engage in the political process but will instead be deterred by this bill. As stated in a *Wall Street Journal* editorial this morning, “Creating a special exception for the NRA, and thereby assuring the Democrats ‘good grades’ on Second Amendment rights, eases the way for the bill to be passed. A failing grade on First Amendment rights is somebody else's problem.” The exemption is intended to make it easier for a ***bad bill*** to get the votes it needs to pass.

**Favors unions over corporations.** Current law already bans foreign nationals from contributing to elections. See the [RSC Policy Paper on Citizens United](#) for more details. DISCLOSE makes current law much more restrictive and bans independent expenditures on activity by American corporations with 20% or more foreign ownership. However, similar restrictions are not included for unions with foreign members or non-citizen members. As eight former Federal Election Commissioners stated in a recent *Wall Street Journal* article, “... Disclose does not ban foreign speech but speech by American citizen shareholders of U.S. companies that have some element of foreign ownership, even when those foreigners have no control over the decisions made by the Americans who run the company.” Additionally, the new threshold for reporting (\$600 in donations for independent expenditures) will have little effect on unions whose members’ annual dues average much lower than \$600. *This would preclude unions from having to report.* The bill also prohibits independent expenditures or disbursing funds for electioneering communications by anyone with a government contract greater than \$7 million. (Originally, the threshold was \$50,000, which was changed in mark-up.) *This does not apply to unions in collective bargaining agreements with the government.*

**Threatens organizations with lawsuits for non-compliance.** The bill becomes effective 30 days after enactment, giving the Federal Election Commission no time to craft regulations relating to the implementation of the bill, which will certainly be complicated, and not to mention expensive, to execute. *Organizations would have to operate without any guidance from the FEC and risk possible lawsuits.*

**Onerous disclosure and reporting requirements will deter citizen engagement.** The bill includes requirements that every incorporated entity engaged in independent campaign activity must list all donors of \$600 or more with the Federal Election Commission (FEC). The bill also requires CEOs of organizations to appear in the ads, and state their name and their organization two times. Additionally, the top five funders of the organization must be listed in the ad (and top two for radio), and if there is a top “significant” funder, he or she must identify himself or herself, his or her title, and state the name of the organization *three times in the ad.* These tedious and onerous requirements will have the effect of deterring organizations from getting involved in elections (and potentially take up most of the ad time).

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*Citizens United* was a triumph in defense of the First Amendment right to free speech and a reaffirmation of the rights of businesses, unions, and citizens’ associations to engage in political communications. The DISCLOSE Act is the opposite, and the business community knows it. This bill is an attack on the ability of non-party organizations to engage in the political realm during an election year.

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