

RSC Policy Brief:
The DISCLOSE Act
May 25, 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

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*.

Because the DISCLOSE Act was marked up on Thursday, May 20, 2010, the RSC has provided this pre-floor analysis in case the bill comes to the floor this week. *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 right before elections. It was crafted behind closed doors with no input from Republican members of the House Administration Committee. Furthermore, it 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.

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 expenditures on activity by American corporations with 20% or more foreign ownership. 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.” Similar restrictions for unions were not included in the bill despite efforts in mark-up by Republicans to include them. In fact, almost immediately after the bill passed out of committee, an article in *The Hill* reported “[Unions to spend \\$100M in 2010 campaign to save Dem majorities.](#)”

Onerous disclosure and reporting requirements will deter citizen engagement. The bill includes requirements that every corporation engaged in campaign activity – from the National Rifle Association to the Sierra Club to your alumni club to your condo association – must list all donors of \$600 or more with the Federal Election Commission (FEC). The bill also requires the CEO of an organization and the CEO of its highest donor to appear on the ad and state their approval of the message – just as political candidates must do. Additionally, the top five funders of the organization must be listed in the ad. These tedious and onerous requirements will have the effect of deterring organizations from getting involved in elections. The bill also appears to have a negative impact on bloggers. RSC is reviewing the bill to see to what extent.

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. For a letter signed by dozens of organizations representing associations across the country, [click here](#). This bill is an attack on their ability to engage in the political realm during an election year. (Note: While some of the issues of concern listed by these businesses were addressed in mark-up, many of the most egregious parts of the bill outlined in this letter are still relevant.)

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