



**Testimony of the  
Center for Competitive Politics  
Before the Committee on House Administration**

“Additional Discussion of H.R. 5175, The DISCLOSE ACT, Democracy is  
Strengthened by Casting Light on Spending in Elections”

Tuesday, May 11, 2010  
5 p.m.

Center for Competitive Politics  
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In the wake of the Supreme Court's decision in *Citizens United v. Federal Election Commission*, there has been a great deal of confusion over the issue of disclosure, confusion that has been stoked by irresponsible and inaccurate rhetoric about "shadow groups" and "front groups" from individuals and organizations who oppose the Court's ruling and seek to undermine it and the First Amendment.

In order to clear up these misunderstandings, the Center for Competitive Politics has prepared a memo, attached to this testimony, which outlines current disclosure requirements according to federal law and the regulations of the Federal Election Commission (FEC). To summarize the key points of the memo:

- Any group, including a 527 group or a 501(c)(4), (c)(5), or (c)(6), must disclose all contributions above a certain amount given for the purpose of funding an independent expenditure (IE) or an electioneering communication (EC). **2 U.S.C. 434(c)** and **2 U.S.C. 434(f)**
- Any group, including a 527 group or a 501(c)(4), (c)(5), or (c)(6), must disclose all contributions above a certain amount solicited for the purpose of funding an IE or EC. **2 U.S.C. 434(e)** and **2 U.S.C. 434(f)**

Given these requirements, there is simply no credible possibility that so-called shadow groups could form in the late stages of a campaign, run IEs or ECs without disclosing their donors, then disappear after Election Day with the public having no idea who the major funders were.

A group that attempted to operate in such a manner would quickly draw the attention of the FEC—after all, the very act of engaging in an IE or EC draws significant attention to the act. Does anyone truly believe that a group, founded months before an election and expending most of their funds producing and broadcasting IEs and ECs in that time period, could convince anyone that it did not solicit contributions intended for use in IEs and ECs, or accept contributions earmarked for that purpose?

Similarly, an older, more established group that solicits or accepts funds for the purpose of engaging in an IE or EC must also disclose the source of those funds. For example, an effort by the Sierra Club or American Medical Association to raise funds to help elect or defeat candidates for office would have to disclose the donors who give to support these IEs and ECs.

The concern that an organization might be able to fund IEs and ECs out of general funds and thereby avoid disclosure is entirely misplaced. Again, contributions that have been solicited or made for the purpose of engaging in independent expenditures must already be disclosed. By definition the general treasury funds of an organization represents funds from all members and donors, and the use of general treasury funds to further an IE or EC represents the collective voice of the organization as determined by the leadership, not just the largest members or donors. Requiring organizations to disclose donors who did not give in order to further IEs and ECs not only violates the privacy protections recognized in *NAACP v. Alabama*, it threatens to publically identify citizens as supporting messages that they may, in fact, not support.

Not only is such disclosure unwarranted, it goes far beyond the alleged intent of this legislation, to prevent so-called “shadow groups” and “front groups” from hiding their contributors. When established groups like NARAL Pro-Choice America, Natural Resources Defense Council, the National Rifle Association, and others speak using general treasury funds, everybody understand exactly who is speaking—the citizens who have come together to create these and other well-established groups that have gained the trust and respect of many Americans. Disclosure of the type envisioned in the “DISCLOSE Act” undermines the speech of these groups by suggesting that it is not, in fact, the general membership of the group that is speaking, but instead the largest donors to the group.

The “DISCLOSE Act’s” requirements for new and intrusive disclosure requirements are not needed. Current law adequately provides for full transparency for contributions given by citizens and organizations like businesses, unions, trade, professional, and advocacy groups, for the purpose of funding IEs and ECs. No additional laws are needed to disclose the campaign finance activity that the supporters of this bill claim to be concerned about.

## MEMO

**To:** Members of Congress and staff, media, First Amendment advocates  
**From:** Center for Competitive Politics  
**Date:** May 10, 2010  
**Re:** Disclosure provisions in the proposed legislative response to *Citizens United*

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The Center for Competitive Politics remains concerned regarding the disclosure provisions in S. 3295 and H.R. 5175 (“The DISCLOSE Act”). Such proposals are unnecessary, as the existing statute and FEC **regulations** prevent the type of opaque spending of money with which the bill’s sponsors are concerned. Knee-jerk legislation imposing a new disclosure regime for groups that wish to speak—months before an election—presents a serious threat to the constitutional protection of political speech. Sponsors of the bill and their allies in the self-styled reform community have implored Republicans to simply support “disclosure,” but not all disclosure is beneficial. Indeed, supporters of DISCLOSE admit that the bill’s intent is to silence disfavored interests:

“My view is that many CEOs of major organizations will do this [air political ads] if they don’t have to disclose, but once they have to come up front and disclose, I think it will, anyone who wants to hide will not do an ad after this legislation,” past Democratic Senatorial Campaign Committee Chair Chuck Schumer said at a press conference unveiling the bill in late April (he’s the chief sponsor in the Senate).<sup>1</sup> In an Oct. 29, 2009 memo from “reform” groups Common Cause and Public Campaign, the groups said Congress should pass a bill providing “[i]ncreased disclosure” if Citizens United won its case: “This approach, which could be pursued under both FEC and SEC rules, exposes corporations and candidates to potential embarrassment when expenditures come under public scrutiny.”<sup>2</sup> These comments make clear that Democratic leaders are not seeking meaningful disclosure, which is already mandated under current law, but an onerous regime designed to stifle speech and force groups to run through a more complicated regulatory gauntlet.

Even White House Counsel Bob Bauer recognized the costs and potential burdens of disclosure regulations. In a recent article, he explained the motives of “reformers” (using “disclosure” as a catalyst for ever-more regulation): “So for the committee, donor or vendor whose mandated disclosures are scrutinized by the state and allied nongovernmental ‘watchdogs,’ the disclosure regime is not only a challenge to privacy but also the gateway to entanglement with the legal process. The state is not facilitating an exchange of information with their fellow citizens primarily for their enlightenment. Aided by private organizations well funded in their commitment to campaign finance reform, it is committed to the production and availability of data for the purposes of developing the law and extending its reach.”<sup>3</sup>

### **Current 2 U.S.C. 434(c) requires that groups report independent expenditures greater than \$250.**

Current law already provides for disclosure of independent expenditures. This includes the name of the group, individual, or other entity that is doing the spending, the date on which it occurred, the amount spent, the candidate who benefits from the independent expenditure, the purpose of the expenditure and a statement certifying the expenditure was made without coordination between the party authorizing the communication and the candidate whom it promotes. This regulation requires that the reporting follow the money—both who

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<sup>1</sup> Transcript of Sen. Chuck Schumer (D-N.Y.) press conference at the Supreme Court by the Center for Competitive Politics; April 29, 2010

<sup>2</sup> Memo from Common Cause/Public Campaign, “Re: Policy, media and organizing response to Citizens United,” Oct. 29, 2009

<sup>3</sup> Robert F. Bauer, “Not Just a Private Matter: The Purposes of Disclosure in an Expanded Regulatory System,” 2007 (6 Election L.J. 38)

gives and who receives. For example, in the recent Massachusetts Senate race, TeaPartyExpress.org spent hundreds of thousands on independent expenditures. However, their political action committee, called [Our Country Deserves Better](#) PAC, was the source of the funds. A simple search of the FEC website shows that both of these names are listed on the filing papers, along with the names of any person who donated money that furthered the production of the communication. An example is shown below:



**SCHEDULE A**

**ITEMIZED RECEIPTS**  
All Listed Line Numbers

Committee: OUR COUNTRY DESERVES BETTER PAC - TEAPARTYEXPRESS.ORG

There are a total of 1111 Itemized Receipts

Displaying 1 through 500

Previous Page	Page 1 of 3 [1 2 3]	Next Page	
Contributor's Name	Employer	Date	Amount (\$)
Contributor's Address	Occupation	Memo	Aggregate (\$)
	Memo/Description	Text	Limits
QUINTEN WARD PO BOX 8000 #263 MESQUITE, Nevada 89024	NONE	01/01/2010	500.00
	RETIRED		800.00
Mr. DON WILLIAMS 1615 EVE DRIVE CONCORD, California 94521	NONE	01/01/2010	25.00
	RETIRED		250.00
Dr. DONALD LIDSTER 47-109 EL MENARA PALM DESERT, California 92260	NONE	01/02/2010	100.00
	RETIRED		500.00
ROBERT MAYFIELD 11309 PICKFAIR AUSTIN, Texas 78750	ROBERT MAYFIELD	01/02/2010	100.00
	DQ		800.00
WILLIAM GILES 22587 COVERT ROAD ORRISONIA, Pennsylvania 17243	WILLIAM GILES	01/03/2010	500.00
	ARTIST		500.00
CHARLES FLADER 50 COBURN DRIVE WEST BLUFFTON, South Carolina 29909	NONE	01/03/2010	25.00
	RETIRED		205.00
	NONE	01/03/2010	50.00

**RUSSO MARSH + ASSOCIATES, INC.**

PO BOX 1863  
SACRAMENTO, California 95812

Purpose of Expenditure: Email Newsletter Costs  
Name of Federal Candidate supported or opposed by expenditure: Scott Brown  
Office Sought: Senate  
State is Massachusetts in District  
Date Expended = 01/06/2010  
Person Completing Form: Betty Presley  
Date Signed = 02/18/2010

**Amount Expended = \$11027.73**  
**Calendar YTD Per Election for Office Sought = \$348671.17**

**RUSSO MARSH + ASSOCIATES, INC.**

PO BOX 1863  
SACRAMENTO, California 95812

Purpose of Expenditure: Internet Newsletter Costs - Candidate Specific  
Name of Federal Candidate supported or opposed by expenditure: Scott Brown  
Office Sought: Senate  
State is Massachusetts in District  
Date Expended = 01/09/2010  
Person Completing Form: Betty Presley  
Date Signed = 02/18/2010

**Amount Expended = \$10500.00**  
**Calendar YTD Per Election for Office Sought = \$348671.17**

Reporting also follows where the money in independent spending goes. A separate tab on the FEC report shows the disbursements by the group—to whom each payment was made and for what purpose. See example at right:

**Current 2 U.S.C. 434(f) requires groups to report “electioneering communications” when they exceed \$1,000.**

Current law also requires reporting of “electioneering communications. This mandates that the identity of person making the disbursement, any person sharing or exercising direction or control over the activities of such person, the custodian of the books and accounts of the person making the disbursement, the principal place of business of the person making the disbursement (if not an individual), each amount exceeding \$200 that is disbursed, the person to whom the expenditure was made and the election to which the communication pertains be disclosed. Contributions made by individuals that exceed \$1,000 are disclosed, accompanied by the individual’s name and address.

As with independent expenditures, the reporting of electioneering communications also tracks the money. Looking again at the Massachusetts Senate election in January, a quick search of the FEC database shows that the ambiguous-sounding group “Citizens for Strength and Security” spent \$265,876.96 for a communication on Jan. 13, 2010. While the name of the group may not reveal much, the list of donors who funded the electioneering communication do—the eight donations listed came from two labor unions, the SEIU and Communications Workers of America. Such concerns that corporations like Exxon could set up “shadow groups” through which to funnel money for political advertisements are unfounded. That spending would be tracked just as the disbursements by “Citizens for Strength and Security” were.

**ELECTIONEERING COMMUNICATIONS**

1. Individual, Organization or Qualified Nonprofit Corporation Making the Disbursement/Obligations

(a) Name  
CITIZENS FOR STRENGTH AND SECURITY

(b) Address (number and street)  check if different than previously reported  
1716 M STREET NW SS42

(c) City, State and ZIP Code  
WASHINGTON DC 20036

2. FEC Identification Number  
C 030001259

(d) Name of Employer or Principal Place of Business (e) Occupation

3. Is This Statement  New or  Amended

4. Covering Period  M /  D /  Y /  Y /  Y /  Y through  M /  D /  Y /  Y /  Y /  Y  
01 / 13 / 2010 01 / 13 / 2010

5. (a) Date of Public Distribution(s)  M /  D /  Y /  Y /  Y /  Y (b) Communication Title The Same

6. The filer is a(n): (a)  Individual (b)  Unincorporated Organization (c)  Qualified Nonprofit Corporation (11 CFR 114.10)  
(d)  Corporation, Labor Organization or Qualified Nonprofit Corporation making communications under 11 CFR 114.15  
(e)  Other, specify: 527 Political Org.

7. Were the disbursements for the electioneering communication made exclusively from donations to a segregated bank account? Yes  No

8. Custodian of Records  
(a) Name  
Lora Haggard  
(b) Address (number and street)  
1716 M Street, NW  
(c) City, State and ZIP Code  
Washington DC 20036  
(d) Name of Employer or Principal Place of Business (e) Occupation  
Citizens For Strength And Security Treasurer

9. Total Donations This Statement 1250313.00

10. Total Disbursements/Obligations This Statement 265876.96

Under penalty of perjury, I certify that this statement is true, correct and complete.  
TYPE OR PRINT NAME OF PERSON COMPLETING FORM Lora Haggard

ISSUANCE INFORMATION: Electronically Filed by: Lora Haggard DATE: 01/14/2010

**SCHEDULE 9-A**  
**Donation(s) Received** PAGE 3/4

A. Full Name of Donor  
SEIU  
Mailing Address of Donor  
1900 Massachusetts Avenue, NW  
City State Zp  
Washington DC 20036  
Date of Receipt  
M / D / Y / Y / Y / Y  
12 / 08 / 2009  
Amount  
100000.00  
Transaction ID : F92.000006

B. Full Name of Donor  
SEIU  
Mailing Address of Donor  
1900 Massachusetts Avenue, NW  
City State Zp  
Washington DC 20036  
Date of Receipt  
M / D / Y / Y / Y / Y  
01 / 12 / 2010  
Amount  
100000.00  
Transaction ID : F92.000007

C. Full Name of Donor  
Communications Worker of America  
Mailing Address of Donor  
501 Third Street, NW  
City State Zp  
Washington DC 20001  
Date of Receipt  
M / D / Y / Y / Y / Y  
01 / 13 / 2010  
Amount  
100000.00  
Transaction ID : F92.000008

D. Full Name of Donor  
SEIU  
Mailing Address of Donor  
1900 Massachusetts Avenue, NW  
City State Zp  
Washington DC 20036  
Date of Receipt  
M / D / Y / Y / Y / Y  
01 / 13 / 2010  
Amount  
100000.00  
Transaction ID : F92.000009

Similarly, non-profit groups, such as 501(c)(4)s, are also subject to the same kind of disclosure when they commit to running electioneering communications. FEC records show that Susan B. Anthony List Inc., a 501(c)(4), spent \$32,840.00 on creating and airing a radio advertisement called “Truth.” The funding for the ad came from another group, Wellspring Committee, Inc, which is clearly identified on the form.

Image# 28991364108  
**SCHEDULE 9-A**  
**Donation(s) Received**

<b>A. Full Name of Donor</b> Wellspring Committee, Inc			Date of Receipt M M / D D / Y Y Y Y 0 5 / 1 6 / 2 0 0 8		
Mailing Address of Donor 9502 Nelson Ln			Amount 41120.00		
City	State	Zip	Transaction ID : F92.000001		
Manassas	VA	20110			

Image# 28991364109  
**SCHEDULE 9-B**  
**Disbursement(s) Made or Obligations**

<b>A. Full Name (Last, First, Middle Initial) of Payee</b> SRH Media			Date of Disbursement or Obligation M M / D D / Y Y Y Y 0 5 / 1 9 / 2 0 0 8		
Mailing Address of Payee 2204 Countryside Drive			Amount 32840.00		
City	State	Zip Code	Communication Date M M / D D / Y Y Y Y 0 5 / 1 9 / 2 0 0 8		
Silver Spring	MD	20905	Transaction ID : F93.000001		
Name of Employer		Occupation			
Purpose of Disbursement (including title(s) of communication(s)) Truth Radio Ad					

**§ 211-213 of H.R. 5175 would add a new and complicated bureaucratic disclosure regime to federal campaign finance law while midterm elections are in full swing.**

The legislation does not provide time for the FEC to update its regulations, ensuring that groups wishing to speak would face confusion and uncertainty about the what is permitted and how to report under the new laws—perhaps the intent of incumbents wary of criticism. Groups would have to choose between disclosing all their donors (violating the right of anonymous association established in *NAACP v. Alabama*) or setting up a separate account for campaign activity (violating *Citizens United’s* holding that nonprofits, businesses and unions may spend from their general treasuries). Donors—many unsophisticated grassroots activists unfamiliar with the laws—would have to affirmatively request that their funds not be used on campaign activity to remain anonymous. Current law mandating disclosure only when funds are given to further independent expenditures or electioneering communications is sufficient to provide transparency.

**Other disclosure in existing law:** In addition to the above reporting requirements, existing law requires that any organization organized under section 527 of the tax code must also file its donors with the IRS. Moreover, any group whose “major purpose” is the funding of express advocacy expenditures—whether organized under section 527 or some other provision—would also become a PAC, subject to additional, ongoing reporting to the FEC, including the names of all donors to the group. Finally, under existing law all independent expenditures and electioneering communications must include “disclaimers” clearly stating who is paying for the ad.

**Conclusion:**

The proposals in the “DISCLOSE Act” (Democratic Incumbents Seeking to Contain Losses by Outlawing Speech in Elections) amount to nothing more than political posturing that would create another bureaucratic layer to inhibit political discussion, punishing small business owners and grassroots groups that lack the resources to comply with such onerous and unnecessary provisions. As such, we advise Members of Congress to take these concerns into serious consideration before supporting this bill.