



Legislative memo on H.R. 5175, the “DISCLOSE Act”

The U.S. House will consider the “DISCLOSE Act,” better known at CCP as “Democratic Incumbents Seeking to Contain Losses by Outlawing Speech in Elections” today. The Rules Committee added a number of provisions in a “Managers Amendment” yesterday that are not yet fully understood by observers or participants. The bill purports to respond to the Supreme Court’s January decision in *Citizens United v. Federal Election Commission*. DISCLOSE was introduced by DCCC Chairman Chris Van Hollen and Sen. Chuck Schumer, the past DSCC Chairman, in late April.

The bill as amended contains many new elements that have not had the benefit of debate within the House. It is a broad and poorly understood “reform.” There has been no effort to establish any real need for many of the most invasive elements. There are no legislative findings establishing a need for it. It is a mistake to change the ground rules for campaigns in an election year in haste, without a full appreciation for the impact on parties, candidates, and outside groups.

DISCLOSE would:

- (1) **Unfairly widen the gap in treatment between corporations and other organizations like labor unions.**
 - a. Although corporations are forced to certify that foreign investors hold less than 20 percent of the company’s voting shares, unions are not required to certify that 20 percent of their members are not foreign.
 - b. Elements of the Manager’s Amendment appear to offer a loophole for the secret transfer of money among affiliates—if the money is from dues. The impact of this measure would seem to disproportionately favor unions.
 - c. Many restrictions and thresholds are *new* to the bill *as of yesterday*, and none have been subject to careful public analysis or debate.
- (2) **Restrict government contractors over a certain threshold and companies with a foreign investor holding more than 20 percent voting shares from making political expenditures.**
 - a. Democrats rejected numerous parallel restrictions for unions in the mark-up session. An attempt to extend the ban on political expenditures by government contractors to labor unions that negotiate large employment contracts with the government failed.
 - b. The following day, two unions announced plans to spend more than \$100 million helping Democrats in midterm races. The campaign will fund “a massive incumbent protection program,” Gerry McEntee, president of AFSCME, [told *The Hill* newspaper](#). Coincidence?
 - c. DISCLOSE’s abandonment of the historic parallel treatment of unions and corporations in campaign finance law is likely to increase public skepticism about government and the legitimacy of laws governing money in politics.
- (3) **Carve out special treatment for select groups without reason:**
 - a. The so-called NRA exemption would relieve certain large, entrenched lobbying groups from the onerous reporting and compliance requirements of DISCLOSE.
 - b. Leadership maintains that this measure will prevent fly-by-night groups from funneling money into expenditures...

- c. But that scenario is prevented under *existing law*—once a group that has as its major purpose the influencing of federal elections and spends \$1000, the law essentially makes it a PAC.

The Manager's Amendments do nothing to fix the flaws that have marred DISCLOSE from the beginning, and, in fact, move the bill backward:

Burdensome reporting mandates that add nothing to the public's knowledge:

The bill would require nonprofits to either disclose their donors over a certain threshold or establish a separate, segregated fund for political spending. The Supreme Court has rejected both of these attempts in the past, the latter in *Citizens United*. The bill would also require CEOs to appear on screen in disclaimers as much as three-to-four times longer than the disclaimers candidates currently air. Proponents of DISCLOSE have failed to explain why existing disclosure provisions are insufficient to meet any public interest in knowing the sources of funds, as donations to groups for independent expenditures and electioneering communications over \$250 *are already required to be disclosed* through the Federal Elections Commission (FEC).

Electioneering communications and independent expenditures in the forms of radio ads must include a statement detailing the top two funders. No such language format is given in the bill, creating further confusion and making more organizations vulnerable to criminal penalties for non-compliance.

Confusion and regulatory chaos would rein during midterm elections, ensuring that independent speakers, (especially those that might speak ill of incumbents) remain on the sidelines.

The bill would go into effect 30 days after passage, even if the FEC has not written regulations to interpret the many vague provisions in the bill. Leadership refused to sign onto a measure that would ensure the FEC had the appropriate time to codify their regulations and craft the necessary disclosure forms in accordance with the provisions upheld as central to this bill's purpose underscores the true partisan motivations behind this Act.

Earlier, Republicans offered amendments that would replace some instances of vague language with existing language from longstanding FEC's regulations, but those measures were shot down. As a result, speakers will be left guessing at the precise meaning of certain parts of the bill—during the midterm elections! If they guess wrong, they could potentially face criminal sanctions or heavy fines.

Campaign finance law is already extraordinarily complex—the FEC now has regulations for 33 different types of contributions and speech and 71 different types of speakers—and this bill would exponentially worsen that problem. These provisions would ensure that, if the legislation passes, it would not be overturned or remedied until well after the 2010 elections. *Citizens United's* challenge to a portion of the McCain-Feingold law, under a more expedited framework, still took about two years.

At the mark-up, Rep. Michael Capuano (D-Mass.) revealed the bill's true intent, saying "I hope it chills out all—not one side, all sides! I have no problem whatsoever keeping everybody out. If I could keep all outside entities out, I would."

For a more detailed analysis of the bill, or if you have any questions, please contact the Center for Competitive Politics Director of Research & Government Relations, Laura Renz, at (703) 894-6822 or via e-mail at lrenz@campaignfreedom.org.

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