



July 26, 2010

Dear Member of the United States Senate,

We write on behalf of the millions of taxpayers and concerned citizens represented by our respective organizations to urge Congress to reject S. 3628, the DISCLOSE Act, an egregious attempt by the majority to stifle political speech.

S. 3628 is being sold to the public as a “response” to the Supreme Court’s ruling in *Citizens United v. FEC*. However, this bill uses the ruling as an excuse to expand the scope of campaign finance regulations to strangle free speech.

The DISCLOSE Act is constitutionally dubious based on its forced disclosure of the identities of members of an organization. The Supreme Court refused to uphold this type of comprehensive disclosure in *NAACP v. Alabama*, recognizing that compelled disclosure can be used to intimidate speech.

This bill runs afoul of this precedent in two ways: by forcing the top donors of a group, who are not necessarily the specific donors to an ad, to appear in a political communication and by forcing groups to disclose members of their organization who are not necessarily funding communications. This shifts the regulatory paradigm away from those who are actually funding advertisements and targets, for the first time, individual membership in a group. This inclusive treatment of organizational funding reveals that the intent of this legislation is not true disclosure – it is the intimidation of speech.

The bill also marks a stark departure from the traditional treatment of corporations and unions by applying punitive measures to associations in the corporate form, but not to labor unions. Historically, these entities have been treated interchangeably in campaign finance law. The attempt now to separate these associations amounts to nothing more than partisan maneuvering for political gain and sparks constitutional concerns under the Equal Protection clause.

Moreover, in its recent ruling in *Citizens United*, the Supreme Court held that the identity of the speaker cannot provide justification for the inhibition of its speech. By allowing union speech while punishing the speech of similar associations, S. 3628 does exactly this.

In the House, the Committee on House Administration’s rejection of amendments that would have subjected unions to the same treatment as corporations under the DISCLOSE Act illustrates the intent of this bill – to exclude certain groups from the political dialogue.

The DISCLOSE Act is an unequivocal ban on free speech, masquerading as an exercise in accountability. The bill’s sponsors opine these regulations are necessary after the *Citizens United* ruling, arguing that it allows corporations to



prop up “shadow groups” through which money could be funneled to air independent advertisements.

Such fears are unfounded, since current law is based on the disclosure of money, not groups. Any group, including a 527 group or a 501(c)(4), (c)(5), or (c)(6), must disclose its donations above a certain amount given to fund an independent expenditure or an electioneering communication. The disclosure follows the money, not the actor publishing the ad, so it is impossible for the secretive spending envisioned by the proponents of this bill to take place.

Lastly, the bill takes a tenuous stance on foreign entities and their participation in elections. The legislation somewhat vaguely states that a corporation with “foreign ownership” cannot make independent expenditures. This effectively proscribes the First Amendment rights of any American citizens employed by a domestic subsidiary of a foreign corporation, a difficult position to reconcile with the safeguards of the Constitution. The definition of “foreign ownership” also presents pragmatic problems, as it relies on the constitution of a company’s shareholders, which can fluctuate daily in the dynamic global market.

The DISCLOSE Act, while cleverly named, aims to silence political speech by intimidation and onerous regulation. Such efforts should be rejected swiftly. Thus, on behalf of the millions of Americans we represent, we urge you to reject this assault on free speech and to vote against S. 3628.

Sincerely,

- 60 Plus Association, Jim Martin, Chairman
- American Conservative Union, David A. Keene, Chairman
- American Council for Health Care Reform, Douglas Frank, Executive Director
- Americans for Limited Government, William Wilson, President
- Americans for Tax Reform, Grover Norquist, President
- American Grassroots Coalition, Jennifer Hulse, Co-Founder
- American Target Advertising, Inc., Mark Fitzgibbons, President of Corporate and Legal Affairs
- Business Coalition for Fair Competition, John Palatiello, President
- CatholicVote.org, Brian Burch, President
- Center for Individual Freedom, Timothy Lee, Vice President of Legal and Public Affairs
- Center-Right Coalition of Florida, Rick Watson, Chairman
- Citizen Link, Tom Minnery, Senior Vice President of Government and Public Policy
- Citizens for Limited Taxation (MA), Chip Faulkner, President
- Citizens United, David N. Bossie, President
- ClearWord Communications Group, Rick Hendrix, Founding Partner
- Coalition for a Fair Judiciary, Kay Daly, President
- Center for Competitive Politics, Sean Parnell, President
- Competitive Enterprise Institute, John Berlau, Director Center for Investors and Entrepreneurs



Committee for Justice, Curt Levey, Executive Director
Concerned Women for America, Penny Nance, CEO
ConservativeHQ.com, Inc. Richard A. Viguerie, Chairman
Council for America, Ron Pearson, President
Council for Citizens Against Government Waste, Tom Schatz, President
Eagle Forum, Phyllis Schlafly, President
Faith and Freedom Coalition, Ralph Reed, Chairman
Family Research Council Action, Tom McClusky, Senior Vice President
Freedom Action, Myron Ebell, President
Free Speech Coalition, Dick Dingman, Vice President
Gun Owners of America, Larry Pratt, Executive Director
Hispanic Leadership Fund, Mario H. Lopez, President
Home School Legal Defense Association, J. Michael Smith, President
Let Freedom Ring, Colin A. Hanna, President
Liberty Counsel, Mathew Staver, Founder and Chairman
Liberty Guard, Bob Barr, Chairman and Joe Seehusen, President and CEO
Management Association for Private Photogrammetric Surveyors (MAPPs),
John Byrd, Government Affairs Manager
Maryland Center-Right Coalition, Richard Falknor, Chairman
Morgan, Meredith & Associates, Dan Morgan, President
National Right to Life Committee, Dr. David N. O'Steen, Executive Director
National Tax Limitation Committee, Lewis K. Uhler, President
National Taxpayers Union, Duane Parde, President
NetworkGeorgia LLC, Louie Hunt, Owner
Pioneer Institute, Jim Stergios, Executive Director
Property Rights Alliance, Kelsey Zahourek, Executive Director
Renewing American Leadership-Action, Rick Tyler, Chairman
Republican National Lawyers Association, Charles H. Bell, President
RepublicanPAC.com, William H. Shaker, President
RightMarch.com, Dr. William Greene, President
Small Business & Entrepreneurship Council, Karen Kerrigan, President and
CEO
Smart Business Hawaii, Samuel M. Slom, President
Students for Life of America, Kristan Hawkins, Executive Director
Tea Party Express, Amy Kremer, Director Grassroots and Coalitions
Tea Party WDC, Lisa Miller, President
The American Civil Rights Union, Susan A. Carleson, Chairman and CEO
Tradition, Family, Property, Inc., C. Preston Noel III, President
Traditional Values Coalition, Rev. Lou Sheldon, Chairman and Andrea
Lafferty, Executive Director.