























June 10, 2010

Dear Member of the United States House of Representatives,

We write on behalf of the millions of taxpayers and concerned citizens represented by our respective organizations to urge Congress to reject H.R. 5175, the DISCLOSE Act, an egregious attempt by the majority to stifle political speech.

H.R. 5175 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, H.R. 5175 does exactly this.

The Committee on House Administration's rejection of amendments that would have subjected unions to the same treatment as corporations under this bill illustrates the intention of this act – 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





Free Speech











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 H.R. 5175.

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 Hulsey, Co-Founder

American Target Advertising, Inc., Mark Fitzgibbons, President of Corporate and Legal Affairs

Business Coalition for Fair Competition, John Palatiello, President Catholic Vote.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.