national RIGHT TO LIFE committee, inc.

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June 15, 2010

RE: "DISCLOSE Act" (H.R. 5175)

Dear Member of Congress:

On May 27, 2010, we wrote to you to express our strong objections to the so-called "DISCLOSE Act" (H.R. 5175), as reported by the Committee on House Administration, which we characterized as an "attack on the First Amendment rights of your constituents and the private organizations with which they choose to associate." Our letter provided detailed comments on some of the most objectionable provisions of the bill, which we will not repeat here (http://www.nrlc.org/FreeSpeech/NRLCletteronDISCLOSEAct.pdf).

More recently, House Administration Committee Chairman Brady proposed several modifications to the bill in the form of amendments filed at the Rules Committee. Mr. Brady's proposed changes range from minor to completely phony; they do not mitigate the nature or force of the objections that we expressed in our May 27 letter.

As we indicated previously, NRLC is the furthest thing from a "shadow" group. Our organization's name and contact information always appear on our public communications, and we openly proclaim the public policies that we advocate. But there is very little in this bill, despite the pretenses, that is actually intended to provide useful or necessary information to the public. The overriding purpose is precisely the opposite: To discourage, as much as possible, disfavored groups (such as NRLC) from communicating about officeholders, by exposing citizens who support such efforts to harassment and intimidation, and by smothering organizations in layer on layer of record keeping and reporting requirements, all backed by the threat of civil and criminal sanctions.

On June 14, Congressman Clyburn's office circulated a description of an additional change that the authors plan to make, which is being referred to informally as the "NRA carve-out." While no legislative language for this amendment is yet available, the summary description is as follows:

> *Exempt Organizations from Disclosure: Section 501(c)(3) charitable organizations are exempt from the new disclosure requirements. "Exempt section 501(c)(4) organizations" are also exempt from new reporting requirements. These are organizations which have qualified as having tax exempt status under section*

> *501(c)(4) of the tax code for each of the 10 years prior to making a campaign-related disbursement, that had 1 million or more dues-paying members in the prior calendar year, that had members in each of the 50 states, that received no more than 15 percent of their total funding from corporations or labor organizations, and that do not use any corporate or union money to pay for their campaign-related expenditures.*

Based on this description of the "carve out," we offer several observations. First, with respect to the National Right to Life Committee (NRLC), this amendment is not only worthless, but adds insult to injury. NRLC is a federation of affiliated Right to Life organizations in all 50 states, each of which is separately incorporated, and each of which has its own membership structure. While the aggregate number of donors and members of the 50 state affiliates and their chapters exceeds the arbitrary one-million threshold, no individual affiliated corporation has one million "members," nor does the federation headquarters (separately incorporated) meet that criterion. But why should this matter? Why should a movement that is comprised overwhelmingly of grassroots citizen-activists be penalized for adopting a federation structure?

It is perfectly understandable that another advocacy group that has a centralized corporate structure, and a unitary national membership roll, should wish to protect the privacy rights of its donors, and to avoid some of the crippling administrative burdens and legal traps that would be imposed by multiple provisions of H.R. 5175. But what conceivable public policy justification can be offered for imposing those very same burdens on much smaller organizations that are far poorer in the financial, administrative, and legal resources that would be demanded by the proposed array of legal traps, overlapping and accelerated reporting requirements, verbose "disclaimers," and other devices contained in H.R. 5175 -- requirements that were clearly crafted for the very purpose of deterring speech?

Certainly, there can be no constitutional justification for the carve-out distinction. The U.S. Supreme Court has ruled that the First Amendment protects the right of incorporated groups of citizens to communicate with the public to express opinions about the actions of those who hold or seek federal office. The authors of the DISCLOSE Act have demonstrated that their overriding intent is to impede and deter the exercise of that constitutional right. The justifications offered for such legislation rest on the unspoken premise that the American people lack the capacity to properly evaluate advertising or other forms of mass communication, so the incumbent lawmakers will take it upon themselves to protect their hapless constituents from such troublesome communications, in order to prevent them from being "unduly influenced" -- and all of this is being deemed necessary to "protect democracy."

However, the same authors now in effect propose that such “undue influence” is tolerable only if it is exercised by an especially big organization with a centralized corporate structure and large centralized professional staff. This is yet another demonstration that the real principle guiding the authors of the DISCLOSE Act is no principle at all, except crude self interest: They wish to mute as many as possible of the independent voices that might otherwise convey unflattering information to their constituents regarding legislative records and the policies of the current Administration.

One can imagine the outcry that would ensue if a lawmaker proposed that a substantial new “advocacy surtax” should be placed on all newspapers and opinion periodicals, but also proposed an exception for those publications with a national circulation of over one million. The institutional news media would characterize the tax itself as an outrageous infringement on the First Amendment, and the exception as an unsavory, unprincipled attempt to mute opposition by the largest and most influential publications. But there is not one First Amendment for the institutional news media and another First Amendment for everybody else. As the U.S. Supreme Court said in *Citizens United v. FEC*, “We have consistently rejected the proposition that the institutional press has any constitutional privilege beyond that of other speakers.”

We strongly urge you to oppose this pernicious, unprincipled, and unconstitutional legislation. The National Right to Life Committee (NRLC) will include the roll call on passage of H.R. 5175 in our scorecard of key roll calls for the 111th Congress, and reserves the right to also score key procedural votes on this measure. In our scorecard and advocacy materials, the legislation will be accurately characterized as a blatant political attack on the First Amendment rights of NRLC, our state affiliates, and our members and donors.

Sincerely,

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(Please note: The just-published June edition of *National Right to Life News*, currently being disseminated to pro-life activists nationwide, highlights the DISCLOSE Act as the cover story. This article can be downloaded from the NRLC website here: http://www.nrlc.org/freespeech/NRLNewsDISCLOSEAct.pdf)