



June 2, 2010

Dear Member of Congress:

In *Citizens United v. Federal Election Commission*, the Supreme Court restored the First Amendment protection of political speech for all Americans. Speakers of all types - small businesses, corporations, labor unions, and groups of citizens - may now speak out for or against their elected officials. This fundamental right is now under attack by the pending "Democracy Is Strengthened by Casting Light on Elections" ("DISCLOSE Act"). I write today to urge you to vote against this assault on the First Amendment.

Several leaders in the Democratic Party have made it a priority to draft legislation that will significantly burden those seeking to exercise their right to political speech. By imposing onerous disclosure and disclaimer requirements, the deceptively named DISCLOSE Act will silence the voices of millions of Americans this election season.

President Obama stated that this legislation is needed to stop a "potential corporate takeover of our elections." The hastily written DISCLOSE Act does little to keep corporate money out of elections, but will succeed in silencing the voices of large groups of Americans. These disclosure and disclaimer provisions will not place a significant burden on large corporations. In fact, the most burdensome aspects of the legislation only impact organizations with members and donors. To the best of my knowledge, corporations like Goldman Sachs do not have any donors.

Even if the DISCLOSE Act were to succeed in chilling the political speech of large for-profit corporations, which is one of the stated goals of the legislation, those corporations will continue to exercise influence over the political process. Large corporations have the financial resources to engage in sophisticated and costly lobbying campaigns to influence Members of Congress. The Center for Responsive Politics estimates that \$3.48 billion dollars was spent on lobbying in 2009. That number is more than double the \$1.44 billion spent a decade earlier.

While large corporations are the alleged target of the legislation, non-profit organizations from across the ideological spectrum will be most severely impacted. For example, Citizens United is a membership based organization with over 500,000 members. Our members have joined Citizens United because they believe in our message of limited government, freedom of enterprise, strong families, and national sovereignty and security. We promote these ideas through a combination of education, advocacy, and grass roots organization.

Organizations like Citizens United help ensure that our members' voices are heard. An individual's \$50 contribution to a candidate for office may have little impact, but by pooling resources and speaking with one voice, individuals can ensure their message is heard. It is those individuals who are members of groups like Citizens United that will be punished under the proposed legislation.

The DISCLOSE Act will raise the costs of political speech for membership-based organizations. By imposing burdensome disclosure and disclaimer provisions the legislation will force groups to devote their resources to compliance rather than representing their membership.

First, the DISCLOSE Act will require lengthy disclaimers be included in any political advertisements that organizations like Citizens United choose to broadcast. Under current laws a 4.5 second disclaimer is required. Under the DISCLOSE Act, the required disclaimers could conservatively cover 13 to 14 seconds of a 30 second commercial.

Second, should a membership-based group like mine choose to run a political ad, it would be required to compile and report information regarding its donors to the FEC within 24 hours. For organizations that raise funds via direct mail, telephone, or the internet, this is essentially an insurmountable task to complete in such a short time frame. As a Member of Congress you understand the burden that these reporting obligations will cause. As a candidate for office, you have to file quarterly disclosure paperwork and provide an itemized list of your donors to the FEC. There is one critical difference -- you are allowed at least fifteen days to complete this paperwork.

These are just two examples of the excessive burdens imposed on membership-based organizations by the DISCLOSE Act. Membership groups like Citizens United will be penalized as Congress rushes to regulate speech in time to impact the 2010 midterm election cycle. A poll commissioned by Citizens United conducted in March 2010 by McLaughlin & Associates reveals that 49% of Americans believe legislation like the DISCLOSE Act is motivated by politicians' desires to win re-election and keep control of Congress. The legislative progression of the DISCLOSE Act will only reinforce that notion.

The Supreme Court announced its decision in Citizens United on January 21, 2010. On February 11, 2010, Senator Charles Schumer and Representative Chris Van Hollen quickly responded by releasing a "legislative framework" setting forth proposals aimed at limiting political speech. Ignoring their pledges of transparency, the Democratic leadership worked in secret to draft the DISCLOSE Act and introduced the first iteration of the legislation on April 29, 2010. The legislation was drafted behind closed doors with the input of lobbyists seeking to protect their clients' interests. The few Republican Members of Congress who were asked to co-sponsor the DISCLOSE Act were instructed not to disclose the contents of the legislation to other Members prior to its introduction.

After two brief hearings before the Committee on House Administration, a markup hearing was scheduled for May 20, 2010. At the hearing, Chairman Brady introduced the Manager's Amendment which substituted a heavily rewritten bill aimed at addressing some of the plethora

of drafting errors contained within the DISCLOSE Act. This version of the legislation was approved by the Committee in a party line vote.

The markup revealed not only the shoddy nature of the drafted legislation, but also how arbitrary its provisions are. For example, the initial legislation sought to prohibit political speech by government contractors who held government contracts of \$50,000 or more. There were no findings presented to indicate why the proposed \$50,000 would be an appropriate threshold. At the markup hearing Representative Zoe Lofgren introduced an amendment, which passed, to raise the threshold to \$7 million – a 13,900% increase.

The attempts of Republican Members of the Committee to correct significant flaws in the legislation were largely ignored. Efforts by Representatives Dan Lungren, Kevin McCarthy, and Gregg Harper to introduce amendments to ensure that the legislation treat all speakers equally were rebuffed by the Majority. Representative Lungren offered an amendment that would extend the prohibitions on political activity by government contractors to labor unions that have representational contracts with the government. Representative McCarthy proposed that itemization thresholds for the proposed legislation be set at the same amount as required for candidates for federal office. Representative Harper proposed to amend the legislation to take effect on January 1, 2011, in order to provide the Federal Election Commission ample time to promulgate regulations to implement the legislation. These efforts to improve the legislation were rejected by straight party line votes.

The Supreme Court recently restored the rights of citizens to join together and advocate for or against candidates for elected office. It is impossible to judge the impact that these groups of citizens may or may not have on the electoral process. Fear of voters exercising their First Amendment rights is however not a proper motive to enact this flawed legislation. The only legitimate response to speech that one doesn't like is more speech, not regulation.

Now is not the time to drown out the voices of average Americans. The DISCLOSE Act will not succeed in muting corporate political speech, but will raise the costs and barriers to entry for groups of Americans seeking to exercise their right to political speech. For these reasons we urge you to reject this unprecedented assault on the First Amendment by voting against the DISCLOSE Act.

Sincerely,



David N. Bossie
President
Citizens United