

May 20, 2010

The Honorable Robert A. Brady
Chairman
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

The Honorable Dan Lungren
Ranking Member
Committee on House Administration
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Brady and Ranking Member Lungren:

The undersigned organizations representing the spectrum of associations representing business are writing to express our concern with the legislation that recently was introduced as the Democracy Is Strengthened by Casting Light on Spending in Elections Act, H.R. 5175 (the “DISCLOSE Act,” or “Schumer – Van Hollen”). This legislation is a threat to First Amendment rights of businesses across the country. It represents a significant departure from past campaign finance legislation, which sought to treat unions and corporations comparably and was framed in a genuinely bipartisan manner.

Our organizations are among the nation’s leading trade associations and business groups. Together we represent virtually the entire range of American industry, including thousands of small and medium-sized businesses. We provide a variety of services to our member companies, including apprising them of important legislative and regulatory developments, and giving voice to their views on matters of public policy that could affect them, their shareholders, and the men and women they employ.

Schumer – Van Hollen would create a thicket of new regulatory requirements for American businesses. Its sponsors admit that the bill’s purpose is to deter corporations from exercising their First Amendment right to participate in the political process. The bill’s provisions are consistently framed to relieve unions from the stifling regulatory pressures they would place on corporations.

The legislation’s provisions include an outright ban on campaign-related activity by companies that have contracts with the federal government valued at \$50,000 or more. This ban would cover *tens of thousands* of American businesses. Because they provided useful goods or services to the government, these small, medium, and larger-sized corporations would be forbidden from exercising their constitutional right to speak about candidates for federal office whose actions could have decisive effects on them, their shareholders, and workers. Corporations with a small amount of foreign ownership—as low as 20 percent—would be subject to similar, unconstitutional prohibitions on free speech.

The bill imposes no comparable restrictions on labor unions that receive federal grants, negotiate collective bargaining agreements with the government, or have international affiliates, even though unions and their political action committees are the single largest contributor to political campaigns and claim to have spent nearly \$450 million in the 2008 presidential race.

The bill's other provisions are similarly intended to deter rather than merely disclose corporate speech. To quote Senator Schumer, their "deterrent effect should not be underestimated." Corporations and associations that engage in campaign-related activity would be required to file reports with the Federal Election Commission listing all donors of \$600 or more. (This threshold will enable most unions to avoid listing their members, but is low enough to capture most corporate donors.) If a corporation made a general contribution to an organization that engaged in campaign activity in the last election cycle, it would be required to treat the contribution as a political expenditure. Exceptions to these requirements exist if a company forbids an association from using its donation for campaign-related activity, but this provision merely highlights the sponsors' intent: to de-fund business organizations' participation in the political process.

Supporters of the bill claim these provisions are necessary for voters to know who is paying for political advertising. But our organizations and the interests we represent are no secret; we already identify ourselves in political advertisements under current law. The real intent is to force concerned corporations out in the open so they cannot express views about an incumbent member of Congress without fear of reprisal. To quote a 1996 article by the President's nominee for the Supreme Court, Elena Kagan, "Campaign finance laws . . . easily can serve as incumbent-protection devices, insulating current officeholders from challenge and criticism. When such laws apply only to certain speakers or subjects, the danger of illicit motive becomes even greater . . ." That is the case here.

The bill's "stand by your ad" requirements for television and radio are onerous. An organization's CEO and the CEO of its top funder would both have to appear in the advertisement, identify themselves and their organization, and state their approval of the message. The top five funders of the organization would be listed in the ad. In some circumstances a corporate CEO would have to appear and endorse an advertisement even if his or her company had not supported that specific ad. It is estimated that these mandatory disclosures could consume as much as 13 seconds of air time, for spots that often are 30 seconds in length. Once again, the intent is to deter, not to disclose and inform.

In its recent *Citizens United* decision, the Supreme Court reaffirmed that political speech by corporations falls squarely within the protections of the First Amendment. The Constitution does not tolerate restrictions of speech based on the speaker's identity, which have the inevitable effect of targeting specific content and viewpoints. By attempting to silence corporations' voice in the political process while enabling unions to retain their enormous influence, Schumer – Van Hollen is a patently unconstitutional threat to the elections process.

The legislation's partisan intent is also clear. Its principal sponsor in the House is head of the Democratic Congressional Campaign Committee; its other principal sponsor held the same position in the Senate until recently. Senator Schumer has openly admitted his intent to enact the bill quickly to influence the fall elections.

Schumer - Van Hollen is a direct attack on the rights of the business community and the role our organizations play in the national political dialogue. We urge you to oppose this unconstitutional legislation.

Sincerely,

Agricultural Retailers Association
American Apparel & Footwear Association
American Architectural Manufacturers Association
American Bakers Association
American Chemistry Council
American Foundry Society
American Gas Association
American Hotel and Lodging Association
American Insurance Association
American Lighting Association
American Petroleum Institute
American Trucking Associations
American Watch Association
Arizona Chamber of Commerce & Industry
Arkansas State Chamber of Commerce/Associated Industries of Arkansas
Associated Builders and Contractors, Inc.
Associated Equipment Distributors
Associated Food Stores, Inc
Associated General Contractors
Associated General Contractors of California (AGC)
Automotive Parts Remanufacturers Association
Brick Industry Association
Business Roundtable
Business Coalition for Fair Competition
Builders Exchange Inc.
California Retailers Association
Central Ohio Chapter Associated Builders & Contractors, Inc.
Construction Industry Round Table (CIRT)
Edison Electric Institute
Equipment Marketing & Distribution Association
Federation of American Hospitals
Foundry Association of Michigan
Futures Industry Association
Georgia Industry Association
Georgia Mining Association
HARDI - Heating, Airconditioning & Refrigeration Distributors International
Independent Electrical Contractors, Inc
Indiana Cast Metals Association
Inland Pacific Chapter Associated Builders & Contractors
International Association of Amusement Parks and Attractions
International Dairy Foods Association
International Foodservice Distributors Association
International Franchise Association
International Housewares Association

ISSA - The Worldwide Cleaning Industry Association
Kansas Food Dealers Association
Management Association for Private Photogrammetric Surveyors
Marine Retailers Association of America
Maryland Chamber of Commerce
Metals Service Center Institute
Middle Tennessee Chapter - Associated Builders and Contractors, Inc.
Mississippi Chapter - Associated Builders and Contractors, Inc
National Association of Chemical Distributors
National Association of Home Builders
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Federation of Independent Business
National Marine Distributors Association
National Marine Manufacturers Association
National Mining Association
National Paper Trade Association
National Poultry & Food Distributors Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
North American Equipment Dealers Association
Ohio Cast Metals Association
Outdoor Power Equipment and Engine Service Association
Pennsylvania Chamber of Business and Industry
Pennsylvania Foundry Association
Petroleum Equipment Institute
Retail Grocer's Association of Kansas City
Retail Industry Leaders Association
Rocky Mountain Chapter - Associated Builders and Contractors, Inc.
Small Business & Entrepreneurship Council
Society of American Florists
Southeast Pennsylvania Chapter - Associated Builders and Contractors, Inc.
Southeast Texas Chapter - Associated Builders and Contractors, Inc.
Tennessee Chapter, Associated Builders and Contractors, Inc.
Textile Care Allied Trades Association
The Remanufacturing Institute
Truck Renting and Leasing Association
U.S. Chamber of Commerce
U.S. Travel Association
Washington Automotive Wholesalers Association
60 Plus Association

Cc: The Members of the Committee on House Administration