

July 26, 2010

TO THE MEMBERS OF THE UNITED STATES SENATE:

Re: *Schumer – Van Hollen Campaign-Finance Bill*

We write about the Schumer – Van Hollen campaign-finance bill, also known as the DISCLOSE Act. In particular, we write to address recent claims made by the bill's supporters that are either misleading or incorrect.

We want to be clear at the outset that the concerns set forth below apply in full to the new version of DISCLOSE (S. 3628), introduced by Senator Schumer on July 22, 2010. That new bill is not materially different from the House-passed bill in most respects, and it is considerably worse than Sen. Schumer's original bill. It suffers from all of the problems raised below, and should not be mistaken for true campaign finance reform.

***Unequal treatment of speakers.*** The DISCLOSE Act's supporters do not deny that, to the extent the bill favored union speech over corporate speech, it would seriously depart from past campaign-finance legislation and would be unconstitutionally discriminatory. They claim, however, that the bill treats corporate and union speech evenhandedly. That is incorrect.

As an initial matter, the bill contains several provisions that expressly target corporate speech while exempting the same type of speech when it emanates from unions. These include a blanket prohibition on election-related speech by many government contractors, by TARP recipients (mostly small banks), and by domestic corporations that are minority-owned by foreign citizens (§§ 101, 102). These one-sided restrictions mean that if there were a significant political issue on which a covered company and its union disagreed, the union could speak about the matter unfettered, while the company would operate under the burdens of Schumer – Van Hollen. To be sure, unions rarely hold government contracts, but they are heavily dependent on the government in other ways, including through federal grants, collective bargaining agreements, and spending programs like Davis–Bacon. There are now more union members employed by the public sector than by the private sector (Steven Greenhouse, *Most U.S. Union Members Are Working for the Government, New Data Shows*, N.Y. TIMES, Jan. 22, 2010), and union LM-2 forms show that many unions spend a substantial portion of their funds on lobbying and campaign expenditures. Unions' interests in who government leaders are, and what policies they pursue, are at least as great as corporations', yet Schumer – Van Hollen leaves them essentially untouched.

Provisions of the bill that purportedly apply evenhandedly—such as the disclosure and disclaimer requirements (§§ 211, 214)—would also burden corporations while leaving unions largely unaffected. For example, the bill requires reporting of donations above \$600. § 211(a). Because an average union member pays annual dues beneath that threshold—the average dues of the fifteen largest U.S. labor unions were \$377 in 2004 (see Mark Brenner, *Give Your Union a Dues Checkup*, May 27, 2007, <http://www.labornotes.org/node/908>)—unions would seldom be required to disclose donors' identities. Union donors would also routinely be exempted from the

“stand by your ad” requirements, due to a \$10,000 threshold added by the House. § 214. It is estimated that these new on-air disclaimers would take up to half of a 30-second ad—making it too costly for many to speak. It is provisions such as these that Senator Schumer and others have said will not merely disclose corporate speech but will “deter[ ]” it. Remarks by Senator Schumer at Press Conference Announcing Campaign Finance Bill (Feb. 11, 2010).

Unions are among the most active participants in the political process. They spent more than \$450 million in the 2008 elections, will spend more than \$150 million this Fall, account for 40% of the campaign-related spending so far this year (corporations account for less than 15%), and recently spent \$10 million in Arkansas attempting to defeat a single Senator. *See, e.g.,* T.W. Farnam, *Unions Outspending Corporations on Campaign Ads Despite Court Ruling*, WASH. POST, July 7, 2010. Any *bona fide* attempt at campaign-finance reform would address unions and corporations equally, as campaign-finance legislation has in the past. Schumer – Van Hollen does not. Speaker Pelosi and the President have praised the bill’s regulation of corporate speech while omitting reference to purported effects on unions. Statement by the President on the DISCLOSE Act (“[T]his legislation will shine an unprecedented light on corporate spending in political campaigns.”); Pelosi Statement on Passage of DISCLOSE Act by House Administration Committee (“This bill requires corporations to stand by their ads in the same way candidates do[.]”).

The bill’s discriminatory approach is further reflected in the special last-minute exemption for the National Rifle Association (§ 211(c)). Added to secure the NRA’s support for the bill in the House, the exemption was expanded in response to widespread criticism to include a small number of additional groups, including the Sierra Club. Thus, the NRA would be able to engage in election-related speech unencumbered by the bill’s new requirements, whereas the Brady Campaign or other gun-control—or pro gun-ownership—groups would be saddled with the bill’s requirements. This Nation’s voters understand that a bill loaded with special favors for powerful lobbying interests is not true campaign-finance reform. It is a bad bill designed to attract a majority by advantaging some groups at the expense of others.

***Partisan nature of the legislation.*** Supporters of the legislation claim that it is bipartisan, but in fact it is an incumbent-protection shield for members of one party. In the House debate, Representative Henry Johnson of Georgia said that if the bill were not passed “we’ll see more Republicans getting elected, [ ] local, State, and Federal.” Senator Schumer has expressed urgency for enacting the bill in time to affect the 2010 elections. CQ Financial Transcripts, *Senate Democrats Hold News Conference on Corporate and Labor Spending in Elections*, Apr. 29, 2010. Representative Van Hollen has posted on his website an article stating that “congressional Democrats are . . . anxious” to shut down corporate participation “as much as they . . . can . . . as fast as they can” in the 2010 elections. David S. Broder, *Congress Prepares for a Battle over Campaign Finance*, WASH. POST, Jan. 31, 2010, at A21.

***Differences from McCain–Feingold.*** The bill stands in stark contrast to the Bipartisan Campaign Reform Act of 2002 (commonly known as McCain–Feingold or BCRA). BCRA was the culmination of extensive, patient deliberation and bipartisan cooperation. Four years of congressional research and debate occurred between the Senate Committee on Governmental Affairs’ report in 1998 recommending comprehensive campaign-finance reform, and the 2002

enactment of McCain–Feingold. The bill had bipartisan support in the House and Senate and was signed by a Republican president. By contrast, the DISCLOSE Act has no Republican Senate co-sponsors, one of only two Republican co-sponsors voted *against* the bill in the House, and the bill is being rushed through Congress to influence the fall elections.

***The bill is not a bona fide response to Citizens United.*** The bill is being characterized as a response to the Supreme Court’s decision in *Citizens United v. FEC*. That is incorrect, in part for reasons already addressed. In addition, the bill would enlarge the pre-*Citizens United* period in which “electioneering communications” are required to be paid for by a PAC and expand the pre-*Citizens United* definition of “independent expenditure,” thereby adding burdens on corporate speech that did not exist prior to *Citizens United*.

Supporters say that enacting the bill immediately is essential to address the influx of spending that *Citizens United* would allow in the fall elections. But *Citizens United* has not created such a dire threat that emergency, ill-considered legislation must be enacted now. Approximately half the States allow unlimited corporate independent expenditures in elections. Moreover, the bill will have no practical effect on spending by unions, who are among the most zealous participants in the political process. “The *Citizens United* case has taken the lid off, and so we can use our soft money for express advocacy directly,” the political director for AFSCME has said. Eliza Newlin Carney, *Labor’s Uphill Climb This Year*, NAT’L J. MAG., June 26, 2010. The aim of the Schumer – Van Hollen bill is to enable unions to engage in this political activity unfettered in the fall elections, while silencing other, often contradictory, voices in the debate.

Some supporters of the bill have argued that without the Schumer – Van Hollen bill, newly formed anonymous front organizations would be able to run election-related advertisements without disclosing who funds them. In fact, however, the Act reaches far more broadly. It would severely undercut the ability of longstanding, well-known organizations like the undersigned groups to engage in election-related speech. And its provisions could require the CEO of a company that gave general-treasury funds to a business association, with no intention of influencing an election, to nonetheless appear on television and make an on-air disclaimer.

***Constitutionality.*** The constitutional problems presented by Schumer – Van Hollen are profound. It is elementary that speakers should not be subject to different treatment by the government based on their identity or the content of their message. *First Nat’l Bank v. Bellotti*, 435 U.S. 765, 776-77 (1978); *Davis v. FEC*, 128 S. Ct. 2759, 2774 (2008). Yet this is what Schumer – Van Hollen does. Its blanket prohibition on speech by select groups of corporations, favoritism for politically powerful groups like the NRA, and avowed intent to “deter” speech through onerous and time-consuming disclosure requirements all violate basic First Amendment principles. One of the legislation’s principal sponsors in the House—Representative Capuano—has *admitted* that he expects portions of the law to be struck down by the courts. Video Transcript of Hearing before the Committee on House Administration, at 1:22:10 (May 6, 2010). Unlike with McCain–Feingold, the bill’s supporters have not even attempted to develop the record to support such far-reaching legislation—nor could they have, given the haste with which they have attempted to rush the bill through Congress.

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Although campaign-finance legislation has assuredly provoked strong disagreements in the past, it has been introduced in the Senate previously with bipartisanship and evident good intentions for the American political process. By contrast, the so-called DISCLOSE Act comes to the Senate already freighted with the backroom deal-making with powerful interests that barely won it passage in the House, and which is the antithesis of campaign-finance “reform.” The favoritism and partisanship evident in the bill’s journey through the House permeate its provisions and its substance. Whatever one may think of the *Citizens United* decision, and however important it may be to bring as much transparency as possible to the political process, this bill is not the answer. We urge you to oppose this legislation.

Respectfully,

Affiliated Chambers & Business Organizations of Hawaii

Agricultural Retailers Association

Airforwarders Association

Albany Area (GA) Chamber of Commerce

Albany Area (OR) Chamber of Commerce

Alexander City Chamber of Commerce

American Apparel & Footwear Association

American Architectural Manufacturers Association

American Association of Exporters and Importers

American Bakers Association

American Chamber of Commerce Executives

American Chemistry Council

American Council of Engineering Companies

American Foundry Society

American Frozen Food Institute

American Gas Association

American Hotel and Lodging Association

American Insurance Association

American Lighting Association

American Meat Institute

American Moving & Storage Association

American Petroleum Institute

American Trucking Associations

American Watch Association

Anaheim Chamber of Commerce

Arizona Chamber of Commerce & Industry

Arizona-New Mexico Cable Communications Association

Arkansas State Chamber of Commerce/Associated Industries of Arkansas

Associated Builders & Contractors of Western Washington

Associated Builders and Contractors, Inc.

Associated Equipment Distributors

Associated Food Stores, Inc

Associated General Contractors

Associated General Contractors of California (AGC)  
Associated Industries of Massachusetts  
Associated Oregon Industries  
Associated Wire Rope Fabricators  
Association Benefits Corporation  
Association of Commerce & Industry of New Mexico  
Association of the Nonwoven Fabrics Industry  
Association of Washington Business  
Automotive Parts Remanufacturers Association  
Barrington Area Chamber of Commerce  
Bismarck Mandan Chamber of Commerce  
Boise Metro Chamber of Commerce  
Brawley Chamber of Commerce  
Brea Chamber of Commerce  
Brick Industry Association  
Buckeye Valley Chamber of Commerce  
Buffalo Niagara Partnership  
Builders Exchange Inc.  
Building Owners and Managers Association International  
Bullhead Area Chamber of Commerce  
Business Coalition for Fair Competition  
Business Council of Alabama  
Business Roundtable  
Cabarrus Regional Chamber  
California Chamber of Commerce  
California Retailers Association  
Camarillo Chamber of Commerce  
Canandaigua Chamber of Commerce  
Catoosa County Chamber of Commerce  
Cedar City Area Chamber of Commerce  
CenTex Chapter IEC  
Central Alabama Chapter IEC  
Central Indiana IEC  
Central Louisiana Chamber of Commerce  
Central Missouri IEC  
Central Ohio AEC/IEC  
Central Ohio Chapter Associated Builders & Contractors, Inc.  
Central Pennsylvania Chapter IEC  
Central Washington IEC  
Centre County IEC  
Cerritos Regional Chamber of Commerce  
Chicagoland Chamber of Commerce  
Clovis Chamber of Commerce  
Columbus Area Chamber of Commerce  
Construction Industry Round Table (CIRT)  
Consumer Electronics Association

Crop Protection Association of North Carolina  
Destination Marketing Association International  
Direct Marketing Association  
Draper Utah Chamber of Commerce  
East Tennessee IEC  
Eastern Washington Chapter, IEC  
Eau Claire Area Chamber of Commerce  
Edison Electric Institute  
El Centro Chamber of Commerce & Visitors Bureau  
Equipment Marketing & Distribution Association  
Federation of American Hospitals  
Flagstaff Chamber of Commerce  
Florida Chamber of Commerce  
Florida Fertilizer & Agrichemical Association  
Foundry Association of Michigan  
Fremont Area Chamber of Commerce  
Fullerton Chamber of Commerce  
Futures Industry Association  
Gateway Chambers Alliance  
Georgia Industry Association  
Georgia Mining Association  
Gillette Chamber of Commerce  
Greater Durham Chamber Chamber of Commerce  
Greater Effingham Chamber of Commerce & Industry  
Greater Fresno Area Chamber of Commerce  
Greater Irving-Las Colinas Chamber of Commerce  
Greater Montana IEC  
Greater New Haven Chamber of Commerce  
Greater Phoenix Chamber of Commerce  
Greater Springfield Chamber of Commerce  
Green Bay Area Chamber of Commerce  
Gwinnett Chamber of Commerce  
Hampton Roads Chamber of Commerce  
HARDI - Heating, Airconditiong & Refrigeration Distributors International  
Henderson Nevada Chamber of Commerce  
Hilton Head Island – Bluffton Chamber of Commerce  
Howard County Chamber of Commerce  
Huntington Regional Chamber of Commerce  
Huron County Chamber of Commerce  
IEC Atlanta Chapter  
IEC Chesapeake  
IEC Dakotas, Inc.  
IEC Dallas Chapter  
IEC Florida West Coast  
IEC Fort Worth/Tarrant County  
IEC Georgia Chapter

IEC Greater St. Louis  
IEC Hampton Roads Chapter  
IEC National  
IEC NCAEC  
IEC New England  
IEC of Arkansas  
IEC of East Texas  
IEC of Greater Cincinnati  
IEC of Idaho  
IEC of Illinois  
IEC of Kansas City  
IEC of Northwest Pennsylvania  
IEC of Oregon  
IEC of Southeast Missouri  
IEC of Texoma  
IEC of the Bluegrass  
IEC of the Texas Panhandle  
IEC of Utah  
IEC Southern Arizona  
IEC Southern Colorado Chapter  
IEC Southern Indiana Chapter-Evansville  
IEC Texas Gulf Coast Chapter  
IEC Western Reserve Chapter  
IEC, Inc. El Paso Chapter  
IEC, Inc. Lubbock Chapter  
IEC, Inc. San Antonio Chapter  
IEC, South Florida Chapter, Inc.  
IECA Kentucky & S Indiana Chapter  
IECA of Arizona  
IECA of Nashville  
IECA of Southern California, Inc.  
IEC-OKC, Inc.  
Independent Electrical Contractors, Inc  
Indiana Cast Metals Association  
Indiana Chamber of Commerce  
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  
Johnson City Chamber of Commerce  
Johnson City-Jonesborough-Washington County Chamber of Commerce  
Kailua Chamber of Commerce  
Kankakee Regional Chamber of Commerce

Kansas Chamber of Commerce  
Kansas Food Dealers Association  
Kentucky Chamber of Commerce  
Kingdom of Callaway Chamber of Commerce  
Lake Havasu Chamber of Commerce  
Laredo Chamber of Commerce  
Little Rock Regional Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Louisiana Association of Business and Industry  
Lubbock Chamber of Commerce  
Lynchburg (VA) Regional Chamber of Commerce  
Management Association for Private Photogrammetric Surveyors  
Marine Retailers Association of America  
Maryland Chamber of Commerce  
McLean County (IL) Chamber of Commerce  
MEC IEC of Dayton  
Metals Service Center Institute  
Michigan Chamber of Commerce  
Middle Tennessee Chapter - Associated Builders and Contractors, Inc.  
Mid-Oregon Chapter IEC  
Mid-South Chapter IEC  
Midwest IEC  
Mississippi Chapter - Associated Builders and Contractors, Inc  
Missouri Chamber of Commerce and Industry  
Mobile Area Chamber of Commerce  
Modesto Chamber of Commerce  
Montana Chamber of Commerce  
Montana IEC  
Montgomery Area Chamber of Commerce (AL)  
Montgomery County (PA) Chamber of Commerce  
Morrisville Chamber of Commerce  
Mount Vernon-Lee Chamber of Commerce  
National Association of Chemical Distributors  
National Association of Home Builders  
National Association of Manufacturers  
National Association of Mutual Insurance Companies  
National Association of Printing Ink Manufacturers, Inc.  
National Association of Wholesaler-Distributors  
National Federation of Independent Business  
National Grain and Feed Association  
National Marine Distributors Association  
National Marine Manufacturers Association  
National Mining Association  
National Paper Trade Association  
National Poultry & Food Distributors Association  
National Ready Mixed Concrete Association

National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Stone, Sand, and Gravel Association  
Nebraska Agri-Business Association  
New Jersey IEC  
New Jersey Motor Truck Association  
Niagara USA Chamber  
North American Equipment Dealers Association  
North Dakota Chamber of Commerce  
North Las Vegas Chamber of Commerce  
Northern Kentucky Chamber of Commerce  
Northern New Mexico IEC  
Northern Ohio ECA  
NW Washington IEC  
Ohio Cast Metals Association  
Ohio Chamber of Commerce  
Oklahoma Agribusiness Retailers Association  
Oshkosh Chamber of Commerce  
Outdoor Power Equipment and Engine Service Association  
Oxnard Chamber of Commerce  
Palm Desert Chamber of Commerce  
Pennsylvania Chamber of Business and Industry  
Pennsylvania Foundry Association  
Perry Area Chamber of Commerce  
Petroleum Equipment Institute  
Plattsburgh-North Country Chamber of Commerce  
Printing Industries of America  
Public Service Research Council  
Puerto Rico Chamber of Commerce  
Puget Sound Washington Chapter IEC  
Pullman Chamber of Commerce  
Regional Black Chamber of Commerce SFV  
Renewing American Leadership  
Reno Sparks Chamber of Commerce  
Retail Grocer's Association of Kansas City  
Retail Industry Leaders Association  
Rhode Island Chamber of Commerce Coalition  
Rio Grande Valley IEC, Inc  
Rocky Mountain Agribusiness Association  
Rocky Mountain Chapter - Associated Builders and Contractors, Inc.  
Rocky Mountain Chapter IEC  
Rome Area Chamber of Commerce  
Rowan County Chamber of Commerce  
Salisbury Area Chamber of Commerce  
San Jose Silicon Valley Chamber of Commerce

Schuylkill Chamber of Commerce  
Scottsdale Area Chamber of Commerce (AZ)  
Small Business & Entrepreneurship Council  
Society of American Florists  
South Carolina Fertilizer & Agrichemicals Association.  
Southeast Pennsylvania Chapter - Associated Builders and Contractors, Inc.  
Southeast Texas Chapter - Associated Builders and Contractors, Inc.  
Southern Crop Production Association  
Southern New Mexico IEC  
Southern Wayne County Regional Chamber  
St. George Area Chamber of Commerce  
Tempe Chamber of Commerce  
Tennessee Chapter, Associated Builders and Contractors, Inc.  
Texarkana USA Chamber of Commerce  
Texas Association of Business  
Texas State IEC  
Textile Care Allied Trades Association  
The American Financial Services Association  
The Business Council of New York State, Inc.  
The Business Council of Westchester  
The Chamber of Commerce of West Alabama  
The Chamber of Commerce serving Middletown, Monroe, and Trenton (OH)  
The Chamber of Medford/Jackson County  
The Colorado Association of Commerce and Industry  
The Greater Elkhart Chamber of Commerce  
The Greater York Region Chamber of Commerce  
The Lodi District Chamber of Commerce  
The Otsego County Chamber (NY)  
The Remanufacturing Institute  
The State Chamber of Oklahoma  
Transportation Intermediaries Association  
Tri State IEC  
Tri-City Regional Chamber of Commerce  
Truck Renting and Leasing Association  
Tucson Metropolitan Chamber of Commerce  
U.S. Chamber of Commerce  
U.S. Travel Association  
Warren County Regional Chamber of Commerce  
Washington Automotive Wholesalers Association  
WECA IEC  
Western Colorado IEC  
Wichita Chapter IEC  
Winston-Salem Chamber of Commerce  
Wisconsin Crop Production Association  
Wisconsin Manufacturers & Commerce  
60 Plus Association