

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