June 10, 2010

Dear Member of the United States House of Representatives,

We write on behalf of the millions of taxpayers and concerned citizens represented by our respective organizations to urge Congress to reject H.R. 5175, the DISCLOSE Act, an egregious attempt by the majority to stifle political speech.

H.R. 5175 is being sold to the public as a “response” to the Supreme Court’s ruling in Citizens United v. FEC. However, this bill uses the ruling as an excuse to expand the scope of campaign finance regulations to strangle free speech.

The DISCLOSE Act is constitutionally dubious based on its forced disclosure of the identities of members of an organization. The Supreme Court refused to uphold this type of comprehensive disclosure in NAACP v. Alabama, recognizing that compelled disclosure can be used to intimidate speech.

This bill runs afoul of this precedent in two ways: by forcing the top donors of a group, who are not necessarily the specific donors to an ad, to appear in a political communication and by forcing groups to disclose members of their organization who are not necessarily funding communications. This shifts the regulatory paradigm away from those who are actually funding advertisements and targets, for the first time, individual membership in a group. This inclusive treatment of organizational funding reveals that the intent of this legislation is not true disclosure – it is the intimidation of speech.

The bill also marks a stark departure from the traditional treatment of corporations and unions by applying punitive measures to associations in the corporate form, but not to labor unions. Historically, these entities have been treated interchangeably in campaign finance law. The attempt now to separate these associations amounts to nothing more than partisan maneuvering for political gain and sparks constitutional concerns under the Equal Protection clause.

Moreover, in its recent ruling in Citizens United, the Supreme Court held that the identity of the speaker cannot provide justification for the inhibition of its speech. By allowing union speech while punishing the speech of similar associations, H.R. 5175 does exactly this.

The Committee on House Administration’s rejection of amendments that would have subjected unions to the same treatment as corporations under this bill illustrates the intention of this act – to exclude certain groups from the political dialogue.

The DISCLOSE Act is an unequivocal ban on free speech, masquerading as an exercise in accountability. The bill’s sponsors opine these regulations are necessary after the Citizens United ruling, arguing that it allows corporations to
prop up “shadow groups” through which money could be funneled to air independent advertisements.

Such fears are unfounded, since current law is based on the disclosure of money, not groups. Any group, including a 527 group or a 501(c)(4), (c)(5), or (c)(6), must disclose its donations above a certain amount given to fund an independent expenditure or an electioneering communication. The disclosure follows the money, not the actor publishing the ad, so it is impossible for the secretive spending envisioned by the proponents of this bill to take place.

Lastly, the bill takes a tenuous stance on foreign entities and their participation in elections. The legislation somewhat vaguely states that a corporation with “foreign ownership” cannot make independent expenditures. This effectively proscribes the First Amendment rights of any American citizens employed by a domestic subsidiary of a foreign corporation, a difficult position to reconcile with the safeguards of the Constitution. The definition of “foreign ownership” also presents pragmatic problems, as it relies on the constitution of a company’s shareholders, which can fluctuate daily in the dynamic global market.

The DISCLOSE Act, while cleverly named, aims to silence political speech by intimidation and onerous regulation. Such efforts should be rejected swiftly. Thus, on behalf of the millions of Americans we represent, we urge you to reject this assault on free speech and to vote against H.R. 5175.

Sincerely,

60 Plus Association, Jim Martin, Chairman
American Conservative Union, David A. Keene, Chairman
American Council for Health Care Reform, Douglas Frank, Executive Director
Americans for Limited Government, William Wilson, President
Americans for Tax Reform, Grover Norquist, President
American Grassroots Coalition, Jennifer Hulsey, Co-Founder
American Target Advertising, Inc., Mark Fitzgibbons, President of Corporate and Legal Affairs
Business Coalition for Fair Competition, John Palatiello, President
CatholicVote.org, Brian Burch, President
Center for Individual Freedom, Timothy Lee, Vice President of Legal and Public Affairs
Center-Right Coalition of Florida, Rick Watson, Chairman
Citizen Link, Tom Minnery, Senior Vice President of Government and Public Policy
Citizens for Limited Taxation (MA), Chip Faulkner, President
Citizens United, David N. Bossie, President
ClearWord Communications Group, Rick Hendrix, Founding Partner
Coalition for a Fair Judiciary, Kay Daly, President
Center for Competitive Politics, Sean Parnell, President
Competitive Enterprise Institute, John Berlau, Director Center for Investors and Entrepreneurs