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MARKUP OF H.R. 5175, THE DISCLOSE ACT, DEMOCRACY IS STRENGTHENED BY CASTING LIGHT ON SPENDING IN ELECTIONS

MEETING

BEFORE THE

COMMITTEE ON HOUSE ADMINISTRATION
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

Held in Washington, DC, Thursday, May 20, 2010

Printed for the use of the Committee on House Administration

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MARKUP OF H.R. 5175, THE DISCLOSE ACT, DEMOCRACY IS STRENGTHENED BY CASTING LIGHT ON SPENDING IN ELECTIONS

THURSDAY, MAY 20, 2010

HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, DC

The committee met, pursuant to call, at 2:35 p.m., in room 1310, Longworth House Office Building, Hon. Robert A. Brady (chairman of the committee) presiding.

Present: Representatives, Brady, Lofgren, Capuano, Gonzalez, Davis of California, Davis of Alabama, Lungren, McCarthy, and Harper.

Staff Present: Khalil Abboud, Professional Staff Member; Darrell O'Connor, Professional Staff Member; Jamie Fleet, Staff Director; Tom Hicks, Senior Elections Counsel; Janelle Hu, Elections Counsel; Jennifer Daehn, Elections Counsel; Matt Pinkus, Professional Staff/Parliamentarian; Kyle Anderson, Press Director; Joe Wallace, Legislative Clerk; Victor Arnold Bik, Minority Staff Director; and Katie Ryan, Minority Professional Staff Member.

The CHAIRMAN. I would like to call the Committee on House Administration to order. Today we mark up H.R. 5175 the DISCLOSE Act. The DISCLOSE Act has a simple goal: Letting the American people know who is trying to influence our election.

When the Supreme Court decided the case last January 1, I was disappointed in the Court's decision, but I was very pleased that the Court, by a vote of eight to one embraced disclosures as a way to getting the electorate information about election-related spending. Advancing the DISCLOSE Act today helps us further that goal. Since the Court's decision in January, the Congress has convened six hearings involving 36 witnesses on topic. Those hearings have informed and enhanced the legislation before us today. I hope that the amendments offered by members will continue that progress.

I would now like to recognize our ranking member, Mr. Lungren for an opening statement.

Mr. LUNGREN. Thank you very much, Mr. Chairman. Given the amount of work that we have before us this afternoon, I will try to be brief. I would like to voice my objection and disappointment to the process that this bill has been presented.

Mr. Chairman, it, as I understand, does not require advanced notice for markups in the rules, but I would hope that in light of the revolution of drafting errors and some unintended consequences on

the health care bill that we could have used a better process on this bill. You personally made an effort to have a productive debate on the bill and I do appreciate that, but I have to object to the way this markup has been handled.

I also note the recent Roll Call article in which a representative from the majority said that, quote, "Whatever tweaks the campaign finance bill needs can be made as it advances." I find that somewhat disturbing since what we were talking about is a very delicate matter. It is called the First Amendment to the Constitution. It is called political speech. It is called as the majority opinion said in the case that we are concerned with, the essence of protected free speech in the First Amendment. And it just seems to me to be somewhat questionable that we would be dealing with it in this way.

As I understand, the whole purpose of moving a bill through committee is to allow the detailed analysis that will fix the glaring as well as the hidden problems in the bill. And when we move the bill to the floor as much as possible, it is supposed to be a finished product, one we can determine with certainty what it is and what it is not intended to do. But whether or not we agree on the substance of the issue is one thing, but I would hope that this committee would be able to put out a bill where a debate on the floor argues the substance of our disagreements rather than just trying to clarify the content.

Mr. Chairman, our side only got to the 87–page manager's amendment 22 hours before the markup. We have worked very hard over this last night to try to see what improvements we could make in the bill, but I can't promise we were able to catch every problem. We do have a number of amendments intended to bring some much-needed clarification to this bill, and I would hope that today's markup will address some of these very problematic concerns. And once again, I must just reiterate we are talking about responding to the Supreme Court decision.

The Supreme Court decision dealt with the First Amendment to the Constitution. It dealt with protected free speech, and the essence of that amendment is protected political speech. We ought to be very careful how we handle it and not handle it in a hasty manner. And at least, according to articles that have appeared, this has obviously been the subject of debate on your side of the aisle and some question as to whether we should go forward. I guess the decision has been made that we are going to go forward.

So we will work with you on this, but I just must express my disappointment when we are dealing with such an important subject to the democracy of this Nation that we have to handle it in this way.

I thank you, Mr. Chairman, for the time.

The CHAIRMAN. I thank the gentleman.

Anybody have any opening statements they would like to make?

Ms. Lofgren.

Ms. LOFGREN. Thank you. Mr. Chairman, I will be brief. I have asked to put my full statement in the record.

The CHAIRMAN. Without objection.

Ms. LOFGREN. I would just like to note that I think, actually, the process on this bill has been pretty extensive. I mean the Citizens

United decision was handed down by the Court January 21. There have been six hearings on the decision since that time, three by the House Administration Committee, one by the Judiciary Committee, one by Financial Services and one by the Senate Rules Committee. We have had a total of 36 witnesses, I think as you have mentioned, and 17 of those witnesses testified in front of this committee. Mr. Schumer and Mr. Van Hollen released a framework for their bill February 11, and the bill was introduced April 29, and the bill before us really follows the outline that was released 2 months earlier.

It has been 3 weeks since that time, and I think there has been a substantial amount of time to review the draft as well as the manager's amendment, which we will stay here as long as necessary to go through today. And in fact, we have incorporated a number of the ideas raised by the minority that were good ideas, clearing up the ambiguity as to whether U.S. citizens who are employees of a foreign corporation may voluntarily contribute to their employers PAC. They can and we have clarified that. It was a good idea. It clears up the coordination language to make sure that the mere sharing of legislative or policy positions with a candidate is not coordination and that was a good suggestion.

It modifies the disclaimer rules for radio and TV so that there can be a hardship exemption if it would take up too much of the content time and that was a good suggestion. It conforms the definition of public communication to that which is in the Federal Elections Campaign Act and cleans that up.

So that was a good suggestion. And we will have amendments here today, some of which I think will probably we are going to agree with. So I think this is the process the way it works. I remember when I was in law school, I was told that when you have the facts, argue the law. When you have the law, argue the facts. When you don't have either, argue a lot. And sometimes that happens here as we try to make our points but I think we will have a productive markup today. And I yield back.

The CHAIRMAN. I thank the lady. Anybody else have any opening statements?

Mrs. DAVIS of California. Thank you. Mr. Chairman, I was just going to say that I don't think my constituents have had difficulty exercising their free speech rights since this decision came down. We really have heard from hundreds of angry constituents who were calling in, but none of them have written in support of the ruling. They have been concerned about two things, and I hope that we will have an opportunity to really discuss these two things. Making sure special interests don't take over our elections and making sure voters know who is really behind the ads that they see.

I know, Chairman, you have often said people want to know who is paying and what they are saying and that's important for all of us. So I think it is a kind of a truth in advertising and we need to go through it. We need to explore what the concerns are and I think that the process that we have had—sometimes the process is shorter than we all would like, but we have had good hearings.

We have heard from a number of witnesses expressing concerns and criticisms. I don't think anybody felt slighted in the hearing

that was here before, and I know that we have addressed many of the concerns that have come forward in the manager's amendment and taken their concerns into consideration as we enhance the bill.

So I am glad we can have an opportunity to put foremost in our mind voters first by passing this DISCLOSE Act today, but I think we are going to have a very robust discussion and I look forward to that.

The CHAIRMAN. I thank the lady. Anybody else? Hearing none, I will now call before the committee H.R. 5175. Without objection, the first reading of the dispensed with and the bill is considered read and open for amendment at any point.

[The information follows:]

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111TH CONGRESS
2D SESSION

H. R. 5175

To amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 29, 2010

Mr. VAN HOLLEN (for himself, Mr. CASTLE, Mr. BRADY of Pennsylvania, and Mr. JONES) introduced the following bill; which was referred to the Committee on House Administration, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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A BILL

To amend the Federal Election Campaign Act of 1971 to prohibit foreign influence in Federal elections, to prohibit government contractors from making expenditures with respect to such elections, and to establish additional disclosure requirements with respect to spending in such elections, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Democracy is Strengthened by Casting Light on Spend-
4 ing in Elections Act" or the "DISCLOSE Act".

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—REGULATION OF CERTAIN POLITICAL SPENDING

Sec. 101. Prohibiting independent expenditures and electioneering communications by government contractors.
Sec. 102. Application of ban on contributions and expenditures by foreign nationals to foreign-controlled domestic corporations.
Sec. 103. Treatment of payments for coordinated communications as contributions.
Sec. 104. Treatment of political party communications made on behalf of candidates.

TITLE II—PROMOTING EFFECTIVE DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY

Subtitle A—Treatment of Independent Expenditures and Electioneering Communications Made by All Persons

Sec. 201. Independent expenditures.
Sec. 202. Electioneering communications.

Subtitle B—Expanded Requirements for Corporations and Other Organizations

Sec. 211. Additional information required to be included in reports on disbursements by covered organizations.
Sec. 212. Rules regarding use of general treasury funds by covered organizations for campaign-related activity.
Sec. 213. Optional use of separate account by covered organizations for campaign-related activity.
Sec. 214. Modification of rules relating to disclaimer statements required for certain communications.

Subtitle C—Reporting Requirements for Registered Lobbyists

Sec. 221. Requiring registered lobbyists to report information on independent expenditures and electioneering communications.

TITLE III—DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY

Sec. 301. Requiring disclosure by covered organizations of information on campaign-related activity.

TITLE IV—OTHER PROVISIONS

Sec. 401. Judicial review.
Sec. 402. Severability.
Sec. 403. Effective date.

1 **SEC. 2. FINDINGS.**

2 (a) GENERAL FINDINGS.—Congress finds and de-
3 clares as follows:

4 (1) Throughout the history of the United
5 States, the American people have been rightly con-
6 cerned about the power of special interests to control
7 our democratic processes. That was true over 100
8 years ago when Congress first enacted legislation in-
9 tended to restrict corporate funds from being used
10 in Federal elections, legislation that Congress in
11 1947 reaffirmed was intended to include inde-
12 pendent expenditures. The Supreme Court held such
13 legislation to be constitutional in 1990 in Austin v.
14 Michigan Chamber of Commerce (494 U.S. 652)
15 and again in 2003 in McConnell v. F.E.C. (540 U.S.
16 93).

17 (2) The Supreme Court's decision in Citizens
18 United v. Federal Election Commission on January
19 21, 2010, reverses established jurisprudence and
20 sound policy to greatly increase the dangers of
21 undue special interest influence over the democratic
22 process. That decision has opened the floodgates for
23 corporations and labor unions to spend unlimited

1 sums from their general treasury accounts to influ-
2 ence the outcome of elections.
3 (3) Congress must take action to ensure that
4 the American public has all the information nec-
5 essary to exercise its free speech and voting rights,
6 and must otherwise take narrowly-tailored steps to
7 regulate independent expenditures and electioneering
8 communications in elections.
9 (b) FINDINGS RELATING TO GOVERNMENT CON-
10 TRACTORS.—Congress finds and declares as follows:
11 (1) Government contracting is an activity that
12 is particularly susceptible to improper influence, and
13 to the appearance of improper influence. Govern-
14 ment contracts must be awarded based on an objec-
15 tive evaluation of how well bidders or potential con-
16 tractors meet relevant statutory criteria.
17 (2) Independent expenditures and electioneering
18 communications that benefit particular candidates or
19 elected officials or disfavor their opponents can lead
20 to apparent and actual ingratiation, access, influ-
21 ence, and quid pro quo arrangements. Government
22 contracts should be awarded based on an objective
23 application of statutory criteria, not based on other
24 forms of inappropriate or corrupting influence.

1 (3) Prohibiting independent expenditures and
2 electioneering communications by persons negoti-
3 ating for or performing government contracts will
4 prevent government officials involved in or with in-
5 fluence over the contracting process from influencing
6 the contracting process based, consciously or other-
7 wise, on this kind of inappropriate or corrupting in-
8 fluence.
9 (4) Prohibiting independent expenditures and
10 electioneering communications by persons negoti-
11 ating for or performing government contracts will
12 likewise prevent such persons from feeling pressure,
13 whether actually exerted by government officials or
14 not, to make expenditures and to fund communica-
15 tions in order to maximize their chances of receiving
16 contracts, or to match similar expenditures and com-
17 munications made by their competitors.
18 (5) Furthermore, because government contracts
19 often involve large amounts of public money, it is
20 critical that the public perceive that the government
21 contracts are awarded strictly in accordance with
22 prescribed statutory standards, and not based on
23 other forms of inappropriate or corrupting influence.
24 The public's confidence in government is under-
25 mined when corporations that make significant ex-

1 penditures during Federal election campaigns later
2 receive government funds.
3 (6) Prohibiting independent expenditures and
4 electioneering communications by persons negoti-
5 ating for or performing government contracts will
6 prevent any appearance that government contracts
7 were awarded based in whole or in part on such ex-
8 penditures or communications, or based on the inap-
9 propriate or corrupting influence such expenditures
10 and communications can create and appear to cre-
11 ate.
12 (7) In these ways, prohibiting independent ex-
13 penditures and electioneering communications by
14 persons negotiating for or performing government
15 contracts will protect the actual and perceived integ-
16 rity of the government contracting process.
17 (8) Moreover, the risks of waste, fraud and
18 abuse, all resulting in economic losses to taxpayers,
19 are significant when would-be public contractors or
20 applicants for public funds make expenditures in
21 Federal election campaigns in order to affect elec-
22 toral outcomes.
23 (c) FINDINGS RELATING TO FOREIGN CORPORA-
24 TIONS.—Congress finds and declares as follows:

1 (1) The Supreme Court's decision in the Citi-
2 zens United case has provided the means by which
3 United States corporations controlled by foreign en-
4 tities can freely spend money to influence United
5 States elections.
6 (2) Foreign corporations commonly own U.S.
7 corporations in whole or in part, and U.S. corporate
8 equity and debt are also held by foreign individuals,
9 sovereign wealth funds, and even foreign nations at
10 levels which permit effective control over those U.S.
11 entities.
12 (3) As recognized in many areas of the law, for-
13 eign ownership interests and influences are exerted
14 in a perceptible way even when the entity is not ma-
15 jority-foreign-owned.
16 (4) The Federal Government has broad con-
17 stitutional power to protect American interests and
18 sovereignty from foreign interference and intrusion.
19 (5) Congress has a clear interest in minimizing
20 foreign intervention, and the perception of foreign
21 intervention, in United States elections.
22 (d) FINDINGS RELATING TO COORDINATED EXPEND-
23 ITURES.—Congress finds and declares as follows:
24 (1) It has been the consistent view of Congress
25 and the courts that coordinated expenditures in

1 campaigns for election are no different in nature
2 from contributions.
3 (2) Existing rules still allow donors to evade
4 contribution limits by making campaign expendi-
5 tures which, while technically qualifying as inde-
6 pendent expenditures under law, are for all relevant
7 purposes coordinated with candidates and political
8 parties and thus raise the potential for corruption or
9 the appearance of corruption.
10 (3) Such arrangements have the potential to
11 give rise to the reality or appearance of corruption
12 to the same degree that direct contributions to a
13 candidate may give rise to the reality or appearance
14 of corruption. Moreover, expenditures which are in
15 fact made in coordination with a candidate or polit-
16 ical party have the potential to lessen the public's
17 trust and faith in the rules and the integrity of the
18 electoral process.
19 (4) The government therefore has a compelling
20 interest in making sure that expenditures that are
21 de facto coordinated with a candidate are treated as
22 such to prevent corruption, the appearance of cor-
23 ruption, or the perception that some participants are
24 circumventing the laws and regulations which govern
25 the financing of election campaigns.

1 (e) FINDINGS RELATING TO DISCLOSURES AND DIS-
2 CLAIMERS.—Congress finds and declares as follows:
3 (1) The American people have a compelling in-
4 terest in knowing who is funding independent ex-
5 penditures and electioneering communications to in-
6 fluence Federal elections, and the government has a
7 compelling interest in providing the public with that
8 information. Effective disclaimers and prompt disclo-
9 sure of expenditures, and the disclosure of the fund-
10 ing sources for these expenditures, can provide
11 shareholders, voters, and citizens with the informa-
12 tion needed to evaluate the actions by special inter-
13 ests seeking influence over the democratic process.
14 Transparency promotes accountability, increases the
15 fund of information available to the public con-
16 cerning the support given to candidates by special
17 interests, sheds the light of publicity on political
18 spending, and encourages the leaders of organiza-
19 tions to act only upon legitimate organizational pur-
20 poses.
21 (2) Protecting this compelling interest has be-
22 come particularly important to address the antici-
23 pated increase in special interest spending on elec-
24 tion-related communications which will result from
25 the Supreme Court's decision in the Citizens United

1 case. The current disclosure and disclaimer require-
2 ments were designed for a campaign finance system
3 in which such expenditures were subject to prohibi-
4 tions that no longer apply.

5 (3) More rigorous disclosure and disclaimer re-
6 quirements are necessary to protect against the eva-
7 sion of current rules. Organizations that engage in
8 election-related communications have used a variety
9 of methods to attempt to obscure their sponsorship
10 of communications from the general public. Robust
11 disclosure and disclaimer requirements are necessary
12 to ensure that the electorate is informed about who
13 is paying for particular election-related communica-
14 tions, and so that the shareholders and members of
15 these organizations are aware of their organizations'
16 election-related spending.

17 (4) The current lack of accountability and
18 transparency allow special interest political spending
19 to serve as a private benefit for the officials of spe-
20 cial interest organizations, to the detriment of the
21 organizations and their shareholders and members.

22 (f) FINDINGS RELATING TO CAMPAIGN SPENDING BY
23 LOBBYISTS.—Congress finds and declares as follows:

(1) Lobbyists and lobbying organizations, and through them, their clients, influence the public decision-making process in a variety of ways.

(2) In recent years, scandals involving undue lobbyist influence have lowered public trust in government and jeopardized the willingness of voters to take part in democratic governance.

(3) One way in which lobbyists may unduly influence Federal officials is through their or their clients making independent expenditures or electioneering communications targeting elected officials.

(4) Disclosure of such independent expenditures and electioneering communications will allow the public to examine connections between such spending and official actions, and will therefore limit the ability of lobbyists to exert an undue influence on elected officials.

TITLE I—REGULATION OF CERTAIN POLITICAL SPENDING

SEC. 101. PROHIBITING INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS BY GOVERNMENT CONTRACTORS.

(a) PROHIBITION APPLICABLE TO GOVERNMENT CONTRACTORS.—

(1) PROHIBITION.—

1 (A) IN GENERAL.—Section 317(a)(1) of
2 the Federal Election Campaign Act (2 U.S.C.
3 441c(a)(1)) is amended by striking "purpose or
4 use; or" and inserting the following: "purpose
5 or use, to make any independent expenditure,
6 or to disburse any funds for an electioneering
7 communication; or".
8 (B) CONFORMING AMENDMENT.—The
9 heading of section 317 of such Act (2 U.S.C.
10 441c) is amended by striking "CONTRIBU-
11 TIONS" and inserting "CONTRIBUTIONS, INDE-
12 PENDENT EXPENDITURES, AND ELECTION-
13 EERING COMMUNICATIONS".
14 (2) THRESHOLD FOR APPLICATION OF BAN.—
15 Section 317 of such Act (2 U.S.C. 441c) is amend-
16 ed—
17 (A) by redesignating subsections (b) and
18 (c) as subsections (c) and (d); and
19 (B) by inserting after subsection (a) the
20 following new subsection:
21 "(b) To the extent that subsection (a)(1) prohibits
22 a person who enters into a contract described in such sub-
23 section from making any independent expenditure or dis-
24 bursing funds for an electioneering communication, such

1 subsection shall apply only if the value of the contract is
2 equal to or greater than $50,000.".
3 (b) APPLICATION TO RECIPIENTS OF ASSISTANCE
4 UNDER TROUBLED ASSET PROGRAM.—Section 317(a) of
5 such Act (2 U.S.C. 441c(a)) is amended—
6 (1) by striking "or" at the end of paragraph
7 (1);
8 (2) by redesignating paragraph (2) as para-
9 graph (3); and
10 (3) by inserting after paragraph (1) the fol-
11 lowing new paragraph:
12 "(2) who enters into negotiations for financial
13 assistance under title I of the Emergency Economic
14 Stabilization Act of 2008 (12 U.S.C. 5211 et seq.)
15 (relating to the purchase of troubled assets by the
16 Secretary of the Treasury), during the period—
17 "(A) beginning on the later of the com-
18 mencement of the negotiations or the date of
19 the enactment of the Democracy is Strength-
20 ened by Casting Light on Spending in Elections
21 Act; and
22 "(B) ending with the later of the termi-
23 nation of such negotiations or the repayment of
24 such financial assistance;

1 directly or indirectly to make any contribution of
2 money or other things of value, or to promise ex-
3 pressly or impliedly to make any such contribution
4 to any political party, committee, or candidate for
5 public office or to any person for any political pur-
6 pose or use, to make any independent expenditure,
7 or to disburse any funds for an electioneering com-
8 munication; or".

9 (c) TECHNICAL AMENDMENT.—Section 317 of such
10 Act (2 U.S.C. 441c) is amended by striking "section 321"
11 each place it appears and inserting "section 316".

12 **SEC. 102. APPLICATION OF BAN ON CONTRIBUTIONS AND**
13 **EXPENDITURES BY FOREIGN NATIONALS TO**
14 **FOREIGN-CONTROLLED DOMESTIC COR-**
15 **PORATIONS.**

16 (a) APPLICATION OF BAN.—Section 319(b) of the
17 Federal Election Campaign Act of 1971 (2 U.S.C.
18 441e(b)) is amended—

19 (1) by striking "or" at the end of paragraph
20 (1);

21 (2) by striking the period at the end of para-
22 graph (2) and inserting "; or"; and

23 (3) by adding at the end the following new
24 paragraph:

1 "(3) any corporation which is not a foreign na-
2 tional described in paragraph (1) and—
3 "(A) in which a foreign national described
4 in paragraph (1) or (2) directly or indirectly
5 owns 20 percent or more of the voting shares;
6 "(B) with respect to which the majority of
7 the members of the board of directors are for-
8 eign nationals described in paragraph (1) or
9 (2);
10 "(C) over which one or more foreign na-
11 tionals described in paragraph (1) or (2) has
12 the power to direct, dictate, or control the deci-
13 sion-making process of the corporation with re-
14 spect to its interests in the United States; or
15 "(D) over which one or more foreign na-
16 tionals described in paragraph (1) or (2) has
17 the power to direct, dictate, or control the deci-
18 sion-making process of the corporation with re-
19 spect to activities in connection with a Federal,
20 State, or local election, including—
21 "(i) the making of a contribution, do-
22 nation, expenditure, independent expendi-
23 ture, or disbursement for an electioneering
24 communication (within the meaning of sec-
25 tion 304(f)(3)); or

1 "(ii) the administration of a political
2 committee established or maintained by the
3 corporation.".
4 (b) CERTIFICATION OF COMPLIANCE.—Section 319
5 of such Act (2 U.S.C. 441e) is amended by adding at the
6 end the following new subsection:
7 "(c) CERTIFICATION OF COMPLIANCE REQUIRED
8 PRIOR TO CARRYING OUT ACTIVITY.—Prior to the mak-
9 ing of any contribution, donation, expenditure, inde-
10 pendent expenditure, or disbursement for an election-
11 eering communication by a corporation during a year, the
12 chief executive officer of the corporation (or, if the cor-
13 poration does not have a chief executive officer, the high-
14 est ranking official of the corporation), shall file a certifi-
15 cation with the Commission, under penalty of perjury, that
16 the corporation is not prohibited from carrying out such
17 activity under subsection (b)(3), unless the chief executive
18 officer has previously filed such a certification during the
19 year.".
20 (c) NO EFFECT ON OTHER LAWS.—Section 319 of
21 such Act (2 U.S.C. 441e), as amended by subsection (b),
22 is further amended by adding at the end the following new
23 subsection:
24 "(d) NO EFFECT ON OTHER LAWS.—Nothing in this
25 section shall be construed to affect the determination of

1 whether a corporation is treated as a foreign national for
2 purposes of any law other than this Act.".

3 **SEC. 103. TREATMENT OF PAYMENTS FOR COORDINATED**
4 **COMMUNICATIONS AS CONTRIBUTIONS.**

5 (a) IN GENERAL.—Section 301(8)(A) of the Federal
6 Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)) is
7 amended—

8 (1) by striking "or" at the end of clause (i);
9 (2) by striking the period at the end of clause
10 (ii) and inserting "; or"; and
11 (3) by adding at the end the following new
12 clause:
13 "(iii) any payment made by any person
14 (other than a candidate, an authorized com-
15 mittee of a candidate, or a political committee
16 of a political party) for a coordinated commu-
17 nication (as determined under section 324).".

18 (b) COORDINATED COMMUNICATIONS DESCRIBED.—
19 Section 324 of such Act (2 U.S.C. 431 et seq.) is amended
20 to read as follows:

21 **"SEC. 324. COORDINATED COMMUNICATIONS.**

22 "(a) COORDINATED COMMUNICATIONS DEFINED.—
23 For purposes of this Act, the term 'coordinated commu-
24 nication' means—

1 "(1) a covered communication which is made in
2 cooperation, consultation, or concert with, or at the
3 request or suggestion of, a candidate, an authorized
4 committee of a candidate, or a political committee of
5 a political party; or
6 "(2) any communication that republishes, dis-
7 seminates, or distributes, in whole or in part, any
8 broadcast or any written, graphic, or other form of
9 campaign material prepared by a candidate, an au-
10 thorized committee of a candidate, or their agents.
11 "(b) COVERED COMMUNICATION DEFINED.—
12 "(1) IN GENERAL.—Except as provided in para-
13 graph (4), for purposes of this subsection, the term
14 'covered communication' means, for purposes of the
15 applicable election period described in paragraph (2),
16 a publicly distributed or disseminated communica-
17 tion that refers to a clearly identified candidate for
18 Federal office and is publicly distributed or publicly
19 disseminated during such period.
20 "(2) APPLICABLE ELECTION PERIOD.—For
21 purposes of paragraph (1), the 'applicable election
22 period' with respect to a communication means—
23 "(A) in the case of a communication which
24 refers to a candidate for the office of President
25 or Vice President, the period—

1 "(i) beginning with the date that is
2 120 days before the date of the first pri-
3 mary election, preference election, or nomi-
4 nating convention for nomination for the
5 office of President which is held in any
6 State; and
7 "(ii) ending with the date of the gen-
8 eral election for such office; or
9 "(B) in the case of a communication which
10 refers to a candidate for any other Federal of-
11 fice, the period—
12 "(i) beginning with the date that is 90
13 days before the earliest of the primary
14 election, preference election, or nominating
15 convention with respect to the nomination
16 for the office that the candidate is seeking;
17 and
18 "(ii) ending with the date of the gen-
19 eral election for such office.
20 "(3) SPECIAL RULE FOR PUBLIC DISTRIBUTION
21 OF COMMUNICATIONS INVOLVING CONGRESSIONAL
22 CANDIDATES.—For purposes of paragraph (1), in
23 the case of a communication involving a candidate
24 for an office other than President or Vice President,
25 the communication shall be considered to be publicly

1 distributed or publicly disseminated only if the dis-
2 semination or distribution occurs in the jurisdiction
3 of the office that the candidate is seeking.
4 "(4) EXCEPTION.—The term 'covered commu-
5 nication' does not include—
6 "(A) a communication appearing in a news
7 story, commentary, or editorial distributed
8 through the facilities of any broadcasting sta-
9 tion, newspaper, magazine, or other periodical
10 publication, unless such facilities are owned or
11 controlled by any political party, political com-
12 mittee, or candidate; or
13 "(B) a communication which constitutes a
14 candidate debate or forum conducted pursuant
15 to the regulations adopted by the Commission
16 to carry out section 304(f)(3)(B)(iii), or which
17 solely promotes such a debate or forum and is
18 made by or on behalf of the person sponsoring
19 the debate or forum.
20 "(c) TREATMENT OF COORDINATION WITH POLIT-
21 ICAL PARTIES FOR COMMUNICATIONS REFERRING TO
22 CANDIDATES.—For purposes of this section, if a commu-
23 nication which refers to any clearly identified candidate
24 or candidates of a political party or any opponent of such
25 a candidate or candidates is determined to have been made

1 in cooperation, consultation, or concert with or at the re-
2 quest or suggestion of a political committee of the political
3 party but not in cooperation, consultation, or concert with
4 or at the request or suggestion of such clearly identified
5 candidate or candidates, the communication shall be treat-
6 ed as having been made in cooperation, consultation, or
7 concert with or at the request or suggestion of the political
8 committee of the political party but not with or at the
9 request or suggestion of such clearly identified candidate
10 or candidates.''.

11 (c) EFFECTIVE DATE.—

12 (1) IN GENERAL.—This section and the amend-
13 ments made by this section shall apply with respect
14 to payments made on or after the expiration of the
15 30-day period which begins on the date of the enact-
16 ment of this Act, without regard to whether or not
17 the Federal Election Commission has promulgated
18 regulations to carry out such amendments.

19 (2) TRANSITION RULE FOR ACTIONS TAKEN
20 PRIOR TO ENACTMENT.—No person shall be consid-
21 ered to have made a payment for a coordinated com-
22 munication under section 324 of the Federal Elec-
23 tion Campaign Act of 1971 (as amended by sub-
24 section (b)) by reason of any action taken by the
25 person prior to the date of the enactment of this

1 Act. Nothing in the previous sentence shall be con-
2 strued to affect any determination under any other
3 provision of such Act which is in effect on the date
4 of the enactment of this Act regarding whether a
5 communication is made in cooperation, consultation,
6 or concert with, or at the request or suggestion of,
7 a candidate, an authorized committee of a candidate,
8 or a political committee of a political party.

9 **SEC. 104. TREATMENT OF POLITICAL PARTY COMMUNICA-**
10 **TIONS MADE ON BEHALF OF CANDIDATES.**

11 (a) TREATMENT OF PAYMENT FOR COMMUNICATION
12 AS CONTRIBUTION IF MADE UNDER CONTROL OR DIREC-
13 TION OF CANDIDATE.—Section 301(8)(A) of the Federal
14 Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)), as
15 amended by section 103(a), is amended—

16 (1) by striking "or" at the end of clause (ii);
17 (2) by striking the period at the end of clause
18 (iii) and inserting "; or"; and
19 (3) by adding at the end the following new
20 clause:
21 "(iv) any payment by a political committee
22 of a political party for the direct costs of a com-
23 munication made on behalf of a candidate for
24 Federal office who is affiliated with such party,
25 but only if the communication is controlled by,

1 or made at the direction of, the candidate or an
2 authorized committee of the candidate.".
3 (b) REQUIRING CONTROL OR DIRECTION BY CAN-
4 DIDATE FOR TREATMENT AS COORDINATED PARTY EX-
5 PENDITURE.—
6 (1) IN GENERAL.—Paragraph (4) of section
7 315(d) of such Act (2 U.S.C. 441a(d)) is amended
8 to read as follows:
9 "(4) SPECIAL RULE FOR DIRECT COSTS OF COMMU-
10 NICATIONS.—The direct costs incurred by a political com-
11 mittee of a political party for a communication made in
12 connection with the campaign of a candidate for Federal
13 office shall not be subject to the limitations contained in
14 paragraphs (2) and (3) unless the communication is con-
15 trolled by, or made at the direction of, the candidate or
16 an authorized committee of the candidate.".
17 (2) CONFORMING AMENDMENT.—Paragraph (1)
18 of section 315(d) of such Act (2 U.S.C. 441a(d)) is
19 amended by striking "paragraphs (2), (3), and (4)"
20 and inserting "paragraphs (2) and (3)".
21 (c) EFFECTIVE DATE.—This section and the amend-
22 ments made by this section shall apply with respect to pay-
23 ments made on or after the expiration of the 30-day period
24 which begins on the date of the enactment of this Act,
25 without regard to whether or not the Federal Election

1 Commission has promulgated regulations to carry out
2 such amendments.

3 TITLE II—PROMOTING EFFEC-
4 TIVE DISCLOSURE OF CAM-
5 PAIGN-RELATED ACTIVITY

6 Subtitle A—Treatment of Inde-
7 pendent Expenditures and Elec-
8 tioneering Communications
9 Made by All Persons

10 **SEC. 201. INDEPENDENT EXPENDITURES.**

11 (a) REVISION OF DEFINITION.—Subparagraph (A) of
12 section 301(17) of the Federal Election Campaign Act of
13 1971 (2 U.S.C. 431(17)) is amended to read as follows:

14 "(A) that, when taken as a whole, ex-
15 pressly advocates the election or defeat of a
16 clearly identified candidate, or is the functional
17 equivalent of express advocacy because it can be
18 interpreted by a reasonable person only as ad-
19 vocating the election or defeat of a candidate,
20 taking into account whether the communication
21 involved mentions a candidacy, a political party,
22 or a challenger to a candidate, or takes a posi-
23 tion on a candidate's character, qualifications,
24 or fitness for office; and".

1 (b) UNIFORM 24-HOUR REPORTING FOR PERSONS
2 MAKING INDEPENDENT EXPENDITURES EXCEEDING
3 $10,000 AT ANY TIME.—Section 304(g) of such Act (2
4 U.S.C. 434(g)) is amended by striking paragraphs (1) and
5 (2) and inserting the following:

6 "(1) INDEPENDENT EXPENDITURES EXCEED-
7 ING THRESHOLD AMOUNT.—

8 "(A) INITIAL REPORT.—A person (includ-
9 ing a political committee) that makes or con-
10 tracts to make independent expenditures in an
11 aggregate amount equal to or greater than the
12 threshold amount described in paragraph (2)
13 shall file a report describing the expenditures
14 within 24 hours.

15 "(B) ADDITIONAL REPORTS.—After a per-
16 son files a report under subparagraph (A), the
17 person shall file an additional report within 24
18 hours after each time the person makes or con-
19 tracts to make independent expenditures in an
20 aggregate amount equal to or greater than the
21 threshold amount with respect to the same elec-
22 tion as that to which the initial report relates.

23 "(2) THRESHOLD AMOUNT DESCRIBED.—In
24 paragraph (1), the 'threshold amount' means—

"(A) during the period up to and including the 20th day before the date of an election, $10,000; or

"(B) during the period after the 20th day, but more than 24 hours, before the date of an election, $1,000.".

(c) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to contributions and expenditures made on or after the expiration of the 30-day period which begins on the date of the enactment of this Act, without regard to whether or not the Federal Election Commission has promulgated regulations to carry out such amendments.

(2) REPORTING REQUIREMENTS.—The amendment made by subsection (b) shall apply with respect to reports required to be filed after the date of the enactment of this Act.

SEC. 202. ELECTIONEERING COMMUNICATIONS.

(a) PERIOD DURING WHICH COMMUNICATIONS TREATED AS ELECTIONEERING COMMUNICATIONS.—

(1) EXPANSION OF PERIOD COVERING GENERAL ELECTION.—Section 304(f)(3)(A)(i)(II)(aa) of the Federal Election Campaign Act of 1971 (2 U.S.C.

1 434(f)(3)(A)(i)(II)(aa)) is amended by striking "60
2 days" and inserting "120 days".
3 (2) EFFECTIVE DATE; TRANSITION FOR COM-
4 MUNICATIONS MADE PRIOR TO ENACTMENT.—The
5 amendment made by paragraph (1) shall apply with
6 respect to communications made on or after the date
7 of the enactment of this Act, without regard to
8 whether or not the Federal Election Commission has
9 promulgated regulations to carry out such amend-
10 ments, except that no communication which is made
11 prior to the date of the enactment of this Act shall
12 be treated as an electioneering communication under
13 section 304(f)(3)(A)(i)(II) of the Federal Election
14 Campaign Act of 1971 (as amended by paragraph
15 (1)) unless the communication would be treated as
16 an electioneering communication under such section
17 if the amendment made by paragraph (1) did not
18 apply.
19 (b) REQUIRING REPORTS TO INCLUDE INFORMATION
20 ON INTENDED TARGET OF COMMUNICATIONS.—Section
21 304(f)(2)(D) of such Act (2 U.S.C. 434(f)(2)(D)) is
22 amended—
23 (1) by striking "and the names" and inserting
24 ", the names"; and

(2) by inserting ", and (if applicable) a statement regarding whether the communications are intended to support or oppose such candidates" before the period at the end.

Subtitle B—Expanded Requirements for Corporations and Other Organizations

SEC. 211. ADDITIONAL INFORMATION REQUIRED TO BE INCLUDED IN REPORTS ON DISBURSEMENTS BY COVERED ORGANIZATIONS.

(a) INDEPENDENT EXPENDITURE REPORTS.—Section 304(g) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(g)) is amended by adding at the end the following new paragraph:

"(5) DISCLOSURE OF ADDITIONAL INFORMATION BY COVERED ORGANIZATIONS MAKING PAYMENTS FOR PUBLIC INDEPENDENT EXPENDITURES.—

"(A) ADDITIONAL INFORMATION.—If a covered organization makes or contracts to make public independent expenditures in an aggregate amount equal to or exceeding $10,000 in a calendar year, the report filed by the organization under this subsection shall include, in

1 addition to the information required under
2 paragraph (3), the following information:
3 "(i) If any person made a donation or
4 payment to the covered organization dur-
5 ing the covered organization reporting pe-
6 riod which was provided for the purpose of
7 being used for campaign-related activity or
8 in response to a solicitation for funds to be
9 used for campaign-related activity—
10 "(I) subject to subparagraph (C),
11 the identification of each person who
12 made such donations or payments in
13 an aggregate amount equal to or ex-
14 ceeding $600 during such period, pre-
15 sented in the order of the aggregate
16 amount of donations or payments
17 made by such persons during such pe-
18 riod (with the identification of the
19 person making the largest donation or
20 payment appearing first); and
21 "(II) if any person identified
22 under subclause (I) designated that
23 the donation or payment be used for
24 campaign-related activity with respect
25 to a specific election or in support of

1 a specific candidate, the name of the
2 election or candidate involved, and if
3 any such person designated that the
4 donation or payment be used for a
5 specific public independent expendi-
6 ture, a description of the expenditure.
7 "(ii) The identification of each person
8 who made unrestricted donor payments to
9 the organization during the covered organi-
10 zation reporting period—
11 "(I) in an aggregate amount
12 equal to or exceeding $600 during
13 such period, if any of the disburse-
14 ments made by the organization for
15 any of the public independent expendi-
16 tures which are covered by the report
17 were not made from the organization's
18 Campaign-Related Activity Account
19 under section 326; or
20 "(II) in an aggregate amount
21 equal to or exceeding $6,000 during
22 such period, if the disbursements
23 made by the organization for all of
24 the public independent expenditures
25 which are covered by the report were

1 made exclusively from the organiza-
2 tion's Campaign-Related Activity Ac-
3 count under section 326 (but only if
4 the organization has made deposits
5 described in subparagraph (D) of sec-
6 tion 326(a)(2) into that Account dur-
7 ing such period in an aggregate
8 amount equal to or greater than
9 $10,000),
10 presented in the order of the aggregate
11 amount of payments made by such persons
12 during such period (with the identification
13 of the person making the largest payment
14 appearing first).
15 "(B) TREATMENT OF TRANSFERS MADE
16 TO OTHER PERSONS.—
17 "(i) IN GENERAL.—For purposes of
18 the requirement to file reports under this
19 subsection (including the requirement
20 under subparagraph (A) to include addi-
21 tional information in such reports), a cov-
22 ered organization which transfers amounts
23 to another person for the purpose of mak-
24 ing a public independent expenditure by
25 that person or by any other person, or (in

1 accordance with clause (ii)) which is
2 deemed to have transferred amounts to an-
3 other person for the purpose of making a
4 public independent expenditure by that
5 person or by any other person, shall be
6 considered to have made a public inde-
7 pendent expenditure.
8 "(ii) RULES FOR DEEMING TRANS-
9 FERS MADE FOR PURPOSE OF MAKING EX-
10 PENDITURES.—For purposes of clause (i),
11 in determining whether a covered organiza-
12 tion or any other person who transfers
13 amounts to another person shall be deemed
14 to have transferred the amounts for the
15 purpose of making a public independent
16 expenditure, the following rules apply:
17 "(I) The person shall be deemed
18 to have transferred the amounts for
19 the purpose of making a public inde-
20 pendent expenditure if—
21 "(aa) the person making the
22 public independent expenditure
23 or another person acting on that
24 person's behalf solicited funding
25 from the person or from the per-

1 son to whom the amounts were
2 transferred for making any pub-
3 lic independent expenditures,
4 "(bb) the person and the
5 person to whom the amounts
6 were transferred engaged in sub-
7 stantial discussion (whether writ-
8 ten or verbal) regarding the mak-
9 ing of public independent expend-
10 itures,
11 "(cc) the person or the per-
12 son to whom the amounts were
13 transferred knew or should have
14 known of the covered organiza-
15 tion's intent to make public inde-
16 pendent expenditures, or
17 "(dd) the person or the per-
18 son to whom the amounts were
19 transferred made a public inde-
20 pendent expenditure during the
21 election cycle involved or the pre-
22 vious election cycle (as defined in
23 section 301(25)).
24 "(II) The person shall not be
25 deemed to have transferred the

1 amounts for the purpose of making a
2 public independent expenditure if the
3 transfer was a commercial transaction
4 occurring in the ordinary course of
5 business between the person and the
6 person to whom the amounts were
7 transferred.

8 "(C) EXCLUSION OF AMOUNTS DES-
9 IGNATED FOR OTHER CAMPAIGN-RELATED AC-
10 TIVITY.—For purposes of subparagraph (A)(i),
11 in determining the amount of a donation or
12 payment made by a person which was provided
13 for the purpose of being used for campaign-re-
14 lated activity or in response to a solicitation for
15 funds to be used for campaign-related activity,
16 there shall be excluded any amount which was
17 designated by the person to be used—

18 "(i) for campaign-related activity de-
19 scribed in clause (i) of section
20 325(d)(2)(A) (relating to independent ex-
21 penditures) with respect to a different elec-
22 tion, or with respect to a candidate in a
23 different election, than an election which is
24 the subject of any of the public inde-

1 pendent expenditures covered by the report
2 involved; or
3 "(ii) for any campaign-related activity
4 described in clause (ii) of section
5 325(d)(2)(A) (relating to electioneering
6 communications).
7 "(D) EXCLUSION OF AMOUNTS PAID FROM
8 SEPARATE SEGREGATED FUND.—In deter-
9 mining the amount of public independent ex-
10 penditures made by a covered organization for
11 purposes of this paragraph, there shall be ex-
12 cluded any amounts paid from a separate seg-
13 regated fund established and administered by
14 the organization under section 316(b)(2)(C).
15 "(E) COVERED ORGANIZATION REPORTING
16 PERIOD DESCRIBED.—In this paragraph, the
17 'covered organization reporting period' is, with
18 respect to a report filed by a covered organiza-
19 tion under this subsection—
20 "(i) in the case of the first report filed
21 by a covered organization under this sub-
22 section which includes information required
23 under this paragraph, the shorter of—
24 "(I) the period which begins on
25 the effective date of the Democracy is

1 Strengthened by Casting Light on
2 Spending in Elections Act and ends
3 on the last day covered by the report,
4 or
5 "(II) the 12-month period ending
6 on the last day covered by the report;
7 and
8 "(ii) in the case of any subsequent re-
9 port filed by a covered organization under
10 this subsection which includes information
11 required under this paragraph, the period
12 occurring since the most recent report filed
13 by the organization which includes such in-
14 formation.
15 "(F) COVERED ORGANIZATION DEFINED.—
16 In this paragraph, the term 'covered organiza-
17 tion' means any of the following:
18 "(i) Any corporation which is subject
19 to section 316(a).
20 "(ii) Any labor organization (as de-
21 fined in section 316).
22 "(iii) Any organization described in
23 paragraph (4), (5), or (6) of section 501(c)
24 of the Internal Revenue Code of 1986 and

1 exempt from tax under section 501(a) of
2 such Code.
3 "(iv) Any political organization under
4 section 527 of the Internal Revenue Code
5 of 1986, other than a political committee
6 under this Act.
7 "(G) OTHER DEFINITIONS.—In this para-
8 graph—
9 "(i) the terms 'campaign-related activ-
10 ity' and 'unrestricted donor payment' have
11 the meaning given such terms in section
12 325; and
13 "(ii) the term 'public independent ex-
14 penditure' means an independent expendi-
15 ture for a public communication (as de-
16 fined in section 301(22)).".
17 (b) ELECTIONEERING COMMUNICATION REPORTS.—
18 (1) IN GENERAL.—Section 304(f) of such Act
19 (2 U.S.C. 434(f)) is amended—
20 (A) by redesignating paragraphs (6) and
21 (7) as paragraphs (7) and (8); and
22 (B) by inserting after paragraph (5) the
23 end the following new paragraph:
24 "(6) DISCLOSURE OF ADDITIONAL INFORMA-
25 TION BY COVERED ORGANIZATIONS.—

1 "(A) ADDITIONAL INFORMATION.—If a
2 covered organization files a statement under
3 this subsection, the statement shall include, in
4 addition to the information required under
5 paragraph (2), the following information:
6 "(i) If any person made a donation or
7 payment to the covered organization dur-
8 ing the covered organization reporting pe-
9 riod which was provided for the purpose of
10 being used for campaign-related activity or
11 in response to a solicitation for funds to be
12 used for campaign-related activity—
13 "(I) subject to subparagraph (C),
14 the identification of each person who
15 made such donations or payments in
16 an aggregate amount equal to or ex-
17 ceeding $1,000 during such period,
18 presented in the order of the aggre-
19 gate amount of donations or payments
20 made by such persons during such pe-
21 riod (with the identification of the
22 person making the largest donation or
23 payment appearing first); and
24 "(II) if any person identified
25 under subclause (I) designated that

1 the donation or payment be used for
2 campaign-related activity with respect
3 to a specific election or in support of
4 a specific candidate, the name of the
5 election or candidate involved, and if
6 any such person designated that the
7 donation or payment be used for a
8 specific electioneering communication,
9 a description of the communication.
10 "(ii) The identification of each person
11 who made unrestricted donor payments to
12 the organization during the covered organi-
13 zation reporting period—
14 "(I) in an aggregate amount
15 equal to or exceeding $1,000 during
16 such period, if any of the disburse-
17 ments made by the organization for
18 any of the electioneering communica-
19 tions which are covered by the state-
20 ment were not made from the organi-
21 zation's Campaign-Related Activity
22 Account under section 326; or
23 "(II) in an aggregate amount
24 equal to or exceeding $10,000 during
25 such period, if the disbursements

1 made by the organization for all of
2 the electioneering communications
3 which are covered by the statement
4 were made exclusively from the orga-
5 nization's Campaign-Related Activity
6 Account under section 326 (but only
7 if the organization has made deposits
8 described in subparagraph (D) of sec-
9 tion 326(a)(2) into that Account dur-
10 ing such period in an aggregate
11 amount equal to or greater than
12 $10,000),
13 presented in the order of the aggregate
14 amount of payments made by such persons
15 during such period (with the identification
16 of the person making the largest payment
17 appearing first).
18 "(B) TREATMENT OF TRANSFERS MADE
19 TO OTHER PERSONS.—
20 "(i) IN GENERAL.—For purposes of
21 the requirement to file statements under
22 this subsection (including the requirement
23 under subparagraph (A) to include addi-
24 tional information in such statements), a
25 covered organization which transfers

1 amounts to another person for the purpose
2 of making an electioneering communication
3 by that person or by any other person, or
4 (in accordance with clause (ii)) which is
5 deemed to have transferred amounts to an-
6 other person for the purpose of making an
7 electioneering communication by that per-
8 son or by any other person, shall be con-
9 sidered to have made a disbursement for
10 an electioneering communication.

11 "(ii) RULES FOR DEEMING TRANS-
12 FERS MADE FOR PURPOSE OF MAKING
13 COMMUNICATIONS.—For purposes of
14 clause (i), in determining whether a cov-
15 ered organization or any other person who
16 transfers amounts to another person shall
17 be deemed to have transferred the amounts
18 for the purpose of making an election-
19 eering communication, the following rules
20 apply:

21 "(I) The person shall be deemed
22 to have transferred the amounts for
23 the purpose of making an election-
24 eering communication if—

1 "(aa) the person making the
2 public independent expenditure
3 or another person acting on that
4 person's behalf solicited funding
5 from the person or from the per-
6 son to whom the amounts were
7 transferred for making any elec-
8 tioneering communications,
9 "(bb) the person and the
10 person to whom the amounts
11 were transferred engaged in sub-
12 stantial discussion (whether writ-
13 ten or verbal) regarding the mak-
14 ing of electioneering communica-
15 tions,
16 "(cc) the person or the per-
17 son to whom the amounts were
18 transferred knew or should have
19 known of the covered organiza-
20 tion's intent to make election-
21 eering communications, or
22 "(dd) the person or the per-
23 son to whom the amounts were
24 transferred made an election-
25 eering communication during the

1 election cycle involved or the pre-
2 vious election cycle (as defined in
3 section 301(25)).
4 "(II) The person shall not be
5 considered to have transferred the
6 amounts for the purpose of making an
7 electioneering communication if the
8 transfer was a commercial transaction
9 occurring in the ordinary course of
10 business between the person and the
11 person to whom the amounts were
12 transferred.
13 "(C) EXCLUSION OF AMOUNTS DES-
14 IGNATED FOR OTHER CAMPAIGN-RELATED AC-
15 TIVITY.—For purposes of subparagraph (A)(i),
16 in determining the amount of a donation or
17 payment made by a person which was provided
18 for the purpose of being used for campaign-re-
19 lated activity or in response to a solicitation for
20 funds to be used for campaign-related activity,
21 there shall be excluded any amount which was
22 designated by the person to be used—
23 "(i) for campaign-related activity de-
24 scribed in clause (ii) of section
25 325(d)(2)(A) (relating to electioneering

1 communications) with respect to a dif-
2 ferent election, or with respect to a can-
3 didate in a different election, than an elec-
4 tion which is the subject of any of the elec-
5 tioneering communications covered by the
6 statement involved; or
7 "(ii) for any campaign-related activity
8 described in clause (i) of section
9 325(d)(2)(A) (relating to independent ex-
10 penditures consisting of a public commu-
11 nication).
12 "(D) COVERED ORGANIZATION REPORTING
13 PERIOD DESCRIBED.—In this paragraph, the
14 'covered organization reporting period' is, with
15 respect to a statement filed by a covered orga-
16 nization under this subsection—
17 "(i) in the case of the first statement
18 filed by a covered organization under this
19 subsection which includes information re-
20 quired under this paragraph, the shorter
21 of—
22 "(I) the period which begins on
23 the effective date of the Democracy is
24 Strengthened by Casting Light on
25 Spending in Elections Act and ends

1 on the disclosure date for the state-
2 ment, or
3 "(II) the 12-month period ending
4 on the disclosure date for the state-
5 ment; and
6 "(ii) in the case of any subsequent
7 statement filed by a covered organization
8 under this subsection which includes infor-
9 mation required under this paragraph, the
10 period occurring since the most recent
11 statement filed by the organization which
12 includes such information.
13 "(E) COVERED ORGANIZATION DE-
14 FINED.—In this paragraph, the term 'covered
15 organization' means any of the following:
16 "(i) Any corporation which is subject
17 to section 316(a).
18 "(ii) Any labor organization (as de-
19 fined in section 316).
20 "(iii) Any organization described in
21 paragraph (4), (5), or (6) of section 501(c)
22 of the Internal Revenue Code of 1986 and
23 exempt from tax under section 501(a) of
24 such Code.

"(iv) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

"(F) OTHER DEFINITIONS.—In this paragraph, the terms 'campaign-related activity' and 'unrestricted donor payment' have the meaning given such terms in section 325.".

(2) CONFORMING AMENDMENT.—Section 304(2) of such Act (2 U.S.C. 434(f)(2)) is amended by striking "If the disbursements" each place it appears in subparagraph (E) and (F) and inserting the following: "Except in the case of a statement which is required to include additional information under paragraph (6), if the disbursements".

SEC. 212. RULES REGARDING USE OF GENERAL TREASURY FUNDS BY COVERED ORGANIZATIONS FOR CAMPAIGN-RELATED ACTIVITY.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by adding at the end the following new section:

1 **"SEC. 325. SPECIAL RULES FOR USE OF GENERAL TREAS-**
2 **URY FUNDS BY COVERED ORGANIZATIONS**
3 **FOR CAMPAIGN-RELATED ACTIVITY.**

4 "(a) USE OF FUNDS FOR CAMPAIGN-RELATED AC-
5 TIVITY.—

6 "(1) IN GENERAL.—Subject to any applicable
7 restrictions and prohibitions under this Act, a cov-
8 ered organization may make disbursements for cam-
9 paign-related activity using—

10 "(A) amounts paid or donated to the orga-
11 nization which are designated by the person
12 providing the amounts to be used for campaign-
13 related activity;

14 "(B) unrestricted donor payments made to
15 the organization; and

16 "(C) other funds of the organization, in-
17 cluding amounts received pursuant to commer-
18 cial activities in the regular course of a covered
19 organization's business.

20 "(2) NO EFFECT ON USE OF SEPARATE SEG-
21 REGATED FUND.—Nothing in this section shall be
22 construed to affect the authority of a covered organi-
23 zation to make disbursements from a separate seg-
24 regated fund established and administered by the or-
25 ganization under section 316(b)(2)(C).

1 "(b) RESTRICTIONS ON USE OF FUNDS FOR CAM-
2 PAIGN-RELATED ACTIVITY.—
3 "(1) CERTIFICATION AFTER RECEIVING NOTIFI-
4 CATION BY DONOR TO NOT USE FUNDS FOR ACTIV-
5 ITY.—If any person who makes a donation, pay-
6 ment, or transfer to a covered organization (other
7 than the covered organization) notifies the organiza-
8 tion in writing (at the time of making the donation,
9 payment, or transfer) that the organization may not
10 use the donation, payment, or transfer for cam-
11 paign-related activity, not later than 7 days after the
12 organization receives the donation, payment, or
13 transfer the organization shall transmit to the per-
14 son a written certification by the chief financial offi-
15 cer of the covered organization (or, if the organiza-
16 tion does not have a chief financial officer, the high-
17 est ranking financial official of the organization),
18 under penalty of perjury, that—
19 "(A) the organization will not use the do-
20 nation, payment, or transfer for campaign-re-
21 lated activity; and
22 "(B) the organization will not include any
23 information on the person in any report filed by
24 the organization under section 304 with respect
25 to independent expenditures or electioneering

1 communications, so that the person will not be
2 required to appear in a significant funder state-
3 ment or a Top 5 Funders list under section
4 318(e).
5 "(2) EXCEPTION FOR PAYMENTS MADE PURSU-
6 ANT TO COMMERCIAL ACTIVITIES.—Paragraph (1)
7 does not apply with respect to any payment or trans-
8 fer made pursuant to commercial activities in the
9 regular course of a covered organization's business.
10 "(c) CERTIFICATIONS REGARDING DISBURSEMENTS
11 FOR CAMPAIGN-RELATED ACTIVITY.—
12 "(1) CERTIFICATION BY CHIEF EXECUTIVE OF-
13 FICER.—If, at any time during a calendar quarter,
14 a covered organization makes a disbursement of
15 funds for campaign-related activity using funds de-
16 scribed in subsection (a)(1), the chief executive offi-
17 cer of the covered organization (or, if the organiza-
18 tion does not have a chief executive officer, the high-
19 est ranking official of the organization), under pen-
20 alty of perjury, shall file a statement with the Com-
21 mission which contains the following certifications:
22 "(A) None of the campaign-related activity
23 for which the organization disbursed the funds
24 during the quarter was made in cooperation,
25 consultation, or concert with, or at the request

1 or suggestion of, any candidate or any author-
2 ized committee or agent of such candidate, or
3 political committee of a political party or agent
4 of any political party.

5 "(B) The chief executive officer or highest
6 ranking official of the covered organization (as
7 the case may be) has reviewed and approved
8 each statement and report filed by the organi-
9 zation under section 304 with respect to any
10 such disbursement made during the quarter.

11 "(C) Each statement and report filed by
12 the organization under section 304 with respect
13 to any such disbursement made during the
14 quarter is complete and accurate and does not
15 contain an untrue statement of a material fact.

16 "(D) All such disbursements made during
17 the quarter are in compliance with this Act and
18 all other applicable Federal laws.

19 "(E) No portion of the amounts used to
20 make any such disbursements during the quar-
21 ter is attributable to funds received by the orga-
22 nization that were restricted by the person who
23 provided the funds from being used for cam-
24 paign-related activity pursuant to subsection
25 (b).

1 "(2) APPLICATION OF ELECTRONIC FILING
2 RULES.—Section 304(d)(1) shall apply with respect
3 to a statement required under this subsection in the
4 same manner as such section applies with respect to
5 a statement under subsection (c) or (g) of section
6 304.
7 "(3) DEADLINE.—The chief executive officer or
8 highest ranking official of a covered organization (as
9 the case may be) shall file the statement required
10 under this subsection with respect to a calendar
11 quarter not later than 15 days after the end of the
12 quarter.
13 "(d) DEFINITIONS.—For purposes of this section, the
14 following definitions apply:
15 "(1) COVERED ORGANIZATION.—The term 'cov-
16 ered organization' means any of the following:
17 "(A) Any corporation which is subject to
18 section 316(a).
19 "(B) Any labor organization (as defined in
20 section 316).
21 "(C) Any organization described in para-
22 graph (4), (5), or (6) of section 501(c) of the
23 Internal Revenue Code of 1986 and exempt
24 from tax under section 501(a) of such Code.

1 "(D) Any political organization under sec-
2 tion 527 of the Internal Revenue Code of 1986,
3 other than a political committee under this Act.
4 "(2) CAMPAIGN-RELATED ACTIVITY.—
5 "(A) IN GENERAL.—The term 'campaign-
6 related activity' means—
7 "(i) an independent expenditure con-
8 sisting of a public communication (as de-
9 fined in section 301(22)), a transfer of
10 funds to another person for the purpose of
11 making such an independent expenditure
12 by that person or by any other person, or
13 (in accordance with subparagraph (B)) a
14 transfer of funds to another person which
15 is deemed to have been made for the pur-
16 pose of making such an independent ex-
17 penditure by that person or by any other
18 person; or
19 "(ii) an electioneering communication,
20 a transfer of funds to another person for
21 the purpose of making an electioneering
22 communication by that person or by any
23 other person, or (in accordance with sub-
24 paragraph (B)) a transfer of funds to an-
25 other person which is deemed to have been

1 made for the purpose of making an elec-
2 tioneering communication by that person
3 or by any other person.
4 "(B) RULE FOR DEEMING TRANSFERS
5 MADE FOR PURPOSE OF CAMPAIGN-RELATED
6 ACTIVITY.—For purposes of subparagraph (A),
7 in determining whether a transfer of funds by
8 one person to another person shall be deemed
9 to have been made for the purpose of making
10 an independent expenditure consisting of a pub-
11 lic communication or an electioneering commu-
12 nication, the following rules apply:
13 "(i) The transfer shall be deemed to
14 have been made for the purpose of making
15 such an independent expenditure or an
16 electioneering communication if—
17 "(I) the person making the inde-
18 pendent expenditure or electioneering
19 communication or another person act-
20 ing on that person's behalf solicited
21 funding from the person or from the
22 person to whom the amounts were
23 transferred for the purpose of making
24 any such independent expenditures or
25 electioneering communications,

1 "(II) the person and the person
2 to whom the amounts were trans-
3 ferred engaged in substantial discus-
4 sion (whether written or verbal) re-
5 garding the making of such inde-
6 pendent expenditures or electioneering
7 communications,
8 "(III) the person or the person to
9 whom the amounts were transferred
10 knew or should have known of the
11 covered organization's intent to dis-
12 burse funds for campaign-related ac-
13 tivity, or
14 "(IV) the person or the person to
15 whom the amounts were transferred
16 made such an independent expendi-
17 ture or electioneering communication
18 during the election cycle involved or
19 the previous election cycle (as defined
20 in section 301(25)).
21 "(ii) The transfer shall not be deemed
22 to have been made for the purpose of mak-
23 ing such an independent expenditure or an
24 electioneering communication if the trans-
25 fer was a commercial transaction occurring

1 in the ordinary course of business between
2 the person and the person to whom the
3 amounts were transferred.
4 "(3) UNRESTRICTED DONOR PAYMENT.—The
5 term 'unrestricted donor payment' means a payment
6 to a covered organization which consists of a dona-
7 tion or payment from a person other than the cov-
8 ered organization, except that such term does not in-
9 clude—
10 "(A) any payment made pursuant to com-
11 mercial activities in the regular course of a cov-
12 ered organization's business;
13 "(B) any donation or payment which is
14 designated by the person making the donation
15 or payment to be used for campaign-related ac-
16 tivity or made in response to a solicitation for
17 funds to be used for campaign-related activity;
18 or
19 "(C) any donation or payment made by a
20 person who notifies the organization in writing
21 (at the time of making the payment) that the
22 organization may not use the donation or pay-
23 ment for campaign-related activity.".

1 **SEC. 213. OPTIONAL USE OF SEPARATE ACCOUNT BY COV-**
2 **ERED ORGANIZATIONS FOR CAMPAIGN-RE-**
3 **LATED ACTIVITY.**

4 Title III of the Federal Election Campaign Act of
5 1971 (2 U.S.C. 431 et seq.), as amended by section 212,
6 is further amended by adding at the end the following new
7 section:

8 **"SEC. 326. OPTIONAL USE OF SEPARATE ACCOUNT BY COV-**
9 **ERED ORGANIZATIONS FOR CAMPAIGN-RE-**
10 **LATED ACTIVITY.**

11 "(a) OPTIONAL USE OF SEPARATE ACCOUNT.—
12 "(1) ESTABLISHMENT OF ACCOUNT.—
13 "(A) IN GENERAL.—At its option, a cov-
14 ered organization may make disbursements for
15 campaign-related activity using amounts from a
16 bank account established and controlled by the
17 organization to be known as the Campaign-Re-
18 lated Activity Account (hereafter in this section
19 referred to as the 'Account'), which shall be
20 maintained separately from all other accounts
21 of the organization and which shall consist ex-
22 clusively of the deposits described in paragraph
23 (2).
24 "(B) MANDATORY USE OF ACCOUNT
25 AFTER ESTABLISHMENT.—If a covered organi-
26 zation establishes an Account under this sec-

1 tion, it may not make disbursements for cam-
2 paign-related activity from any source other
3 than amounts from the Account.
4 "(C) EXCLUSIVE USE OF ACCOUNT FOR
5 CAMPAIGN-RELATED ACTIVITY.—Amounts in
6 the Account shall be used exclusively for dis-
7 bursements by the covered organization for
8 campaign-related activity. After such disburse-
9 ments are made, information with respect to de-
10 posits made to the Account shall be disclosed in
11 accordance with section 304(g)(5) or section
12 304(f)(6).
13 "(2) DEPOSITS DESCRIBED.—The deposits de-
14 scribed in this paragraph are deposits of the fol-
15 lowing amounts:
16 "(A) Amounts donated or paid to the cov-
17 ered organization by a person other than the
18 organization for the purpose of being used for
19 campaign-related activity, and for which the
20 person providing the amounts has designated
21 that the amounts be used for campaign-related
22 activity with respect to a specific election or
23 specific candidate.
24 "(B) Amounts donated or paid to the cov-
25 ered organization by a person other than the

1 organization for the purpose of being used for
2 campaign-related activity, and for which the
3 person providing the amounts has not des-
4 ignated that the amounts be used for campaign-
5 related activity with respect to a specific elec-
6 tion or specific candidate.
7 "(C) Amounts donated or paid to the cov-
8 ered organization by a person other than the
9 organization in response to a solicitation for
10 funds to be used for campaign-related activity.
11 "(D) Amounts transferred to the Account
12 by the covered organization from other accounts
13 of the organization, including from the organi-
14 zation's general treasury funds.
15 "(3) NO TREATMENT AS POLITICAL COM-
16 MITTEE.—The establishment and administration of
17 an Account in accordance with this subsection shall
18 not by itself be treated as the establishment or ad-
19 ministration of a political committee for any purpose
20 of this Act.
21 "(b) REDUCTION IN AMOUNTS OTHERWISE AVAIL-
22 ABLE FOR ACCOUNT IN RESPONSE TO DEMAND OF GEN-
23 ERAL DONORS.—
24 "(1) IN GENERAL.—If a covered organization
25 which has established an Account obtains any reve-

1 nues during a year which are attributable to a dona-
2 tion or payment from a person other than the cov-
3 ered organization, and if any person who makes
4 such a donation or payment to the organization noti-
5 fies the organization in writing (at the time of mak-
6 ing the donation or payment) that the organization
7 may not use the donation or payment for campaign-
8 related activity, the organization shall reduce the
9 amount of its revenues available for deposits to the
10 Account which are described in subsection (a)(3)(D)
11 during the year by the amount of the donation or
12 payment.

13 "(2) EXCEPTION.—Paragraph (1) does not
14 apply with respect to any payment made pursuant to
15 commercial activities in the regular course of a cov-
16 ered organization's business.

17 "(c) COVERED ORGANIZATION DEFINED.—In this
18 section, the term 'covered organization' means any of the
19 following:

20 "(1) Any corporation which is subject to section
21 316(a).

22 "(2) Any labor organization (as defined in sec-
23 tion 316).

24 "(3) Any organization described in paragraph
25 (4), (5), or (6) of section 501(c) of the Internal Rev-

1 enue Code of 1986 and exempt from tax under sec-
2 tion 501(a) of such Code.
3 "(4) Any political organization under section
4 527 of the Internal Revenue Code of 1986, other
5 than a political committee under this Act.
6 "(d) CAMPAIGN-RELATED ACTIVITY DEFINED.—In
7 this section, the term 'covered organization' has the mean-
8 ing given such term in section 325.".

9 **SEC. 214. MODIFICATION OF RULES RELATING TO DIS-**
10 **CLAIMER STATEMENTS REQUIRED FOR CER-**
11 **TAIN COMMUNICATIONS.**

12 (a) APPLYING REQUIREMENTS TO ALL INDE-
13 PENDENT EXPENDITURE COMMUNICATIONS.—Section
14 318(a) of the Federal Election Campaign Act of 1971 (2
15 U.S.C. 441d(a)) is amended by striking "for the purpose
16 of financing communications expressly advocating the
17 election or defeat of a clearly identified candidate" and
18 inserting "for an independent expenditure consisting of a
19 public communication".
20 (b) STAND BY YOUR AD REQUIREMENTS.—
21 (1) MAINTENANCE OF EXISTING REQUIRE-
22 MENTS FOR COMMUNICATIONS BY POLITICAL PAR-
23 TIES AND OTHER POLITICAL COMMITTEES.—Section
24 318(d)(2) of such Act (2 U.S.C. 441d(d)(2)) is
25 amended—

1 (A) in the heading, by striking "OTHERS"
2 and inserting "POLITICAL COMMITTEES";
3 (B) by striking "subsection (a)" and in-
4 serting "subsection (a) which is paid for by a
5 political committee (including a political com-
6 mittee of a political party)"; and
7 (C) by striking "or other person" each
8 place it appears.
9 (2) SPECIAL DISCLAIMER REQUIREMENTS FOR
10 CERTAIN COMMUNICATIONS.—Section 318 of such
11 Act (2 U.S.C. 441d) is amended by adding at the
12 end the following new subsection:
13 "(e) COMMUNICATIONS BY OTHERS.—
14 "(1) IN GENERAL.—Any communication de-
15 scribed in paragraph (3) of subsection (a) which is
16 transmitted through radio or television (other than
17 a communication to which subsection (d)(2) applies
18 because the communication is paid for by a political
19 committee, including a political committee of a polit-
20 ical party) shall include, in addition to the require-
21 ments of that paragraph, the following:
22 "(A) The individual disclosure statement
23 described in paragraph (2) (if the person pay-
24 ing for the communication is an individual) or
25 the organizational disclosure statement de-

1 scribed in paragraph (3) (if the person paying
2 for the communication is not an individual).
3 "(B) If the communication is an election-
4 eering communication or an independent ex-
5 penditure consisting of a public communication
6 and is paid for in whole or in part with a pay-
7 ment which is treated as a disbursement by a
8 covered organization for campaign-related activ-
9 ity under section 325, the significant funder
10 disclosure statement described in paragraph (4)
11 (if applicable).
12 "(C) If the communication is transmitted
13 through television and is an electioneering com-
14 munication or an independent expenditure con-
15 sisting of a public communication and is paid
16 for in whole or in part with a payment which
17 is treated as a disbursement by a covered orga-
18 nization for campaign-related activity under
19 section 325, the Top Five Funders list de-
20 scribed in paragraph (5) (if applicable), unless,
21 on the basis of criteria established in regula-
22 tions promulgated by the Commission, the com-
23 munication is of such short duration that in-
24 cluding the Top Five Funders list in the com-
25 munication would constitute a hardship to the

1 person paying for the communication by requir-
2 ing a disproportionate amount of the commu-
3 nication's content to consist of the Top Five
4 Funders list.

5 "(2) INDIVIDUAL DISCLOSURE STATEMENT DE-
6 SCRIBED.—The individual disclosure statement de-
7 scribed in this paragraph is the following: 'I am
8 _____, and I approve this message.', with
9 the blank filled in with the name of the applicable
10 individual.

11 "(3) ORGANIZATIONAL DISCLOSURE STATE-
12 MENT DESCRIBED.—The organizational disclosure
13 statement described in this paragraph is the fol-
14 lowing: 'I am _____, the _____
15 of _____, and _____ approves
16 this message.', with—

17 "(A) the first blank to be filled in with the
18 name of the applicable individual;

19 "(B) the second blank to be filled in with
20 the title of the applicable individual; and

21 "(C) the third and fourth blank each to be
22 filled in with the name of the organization or
23 other person paying for the communication.

24 "(4) SIGNIFICANT FUNDER DISCLOSURE STATE-
25 MENT DESCRIBED.—

"(A) STATEMENT IF SIGNIFICANT FUNDER IS AN INDIVIDUAL.—If the significant funder of a communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 is an individual, the significant funder disclosure statement described in this paragraph is the following: 'I am _____. I helped to pay for this message, and I approve it.', with the blank filled in with the name of the applicable individual.

"(B) STATEMENT IF SIGNIFICANT FUNDER IS NOT AN INDIVIDUAL.—If the significant funder of a communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 is not an individual, the significant funder disclosure statement described in this paragraph is the following: 'I am _____, the _____ of _____. _____ helped to pay for this message, and _____ approves it.', with—

"(i) the first blank to be filled in with the name of the applicable individual;

"(ii) the second blank to be filled in with the title of the applicable individual; and

"(iii) the third, fourth, and fifth blank each to be filled in with the name of the significant funder of the communication.

"(C) SIGNIFICANT FUNDER DEFINED.—

"(i) INDEPENDENT EXPENDITURES.—For purposes of this paragraph, the 'significant funder' with respect to an independent expenditure consisting of a public communication paid for in whole or in part with a payment which is treated as a disbursement by a covered organization for campaign-related activity under section 325 shall be determined as follows:

"(I) If any report filed by any organization with respect to the independent expenditure under section 304 includes information on any person who made a payment to the organization in an amount equal to or exceeding $100,000 which was des-

1 ignated by the person to be used for
2 campaign-related activity consisting of
3 that specific independent expenditure
4 (as required to be included in the re-
5 port under section 304(g)(5)(A)(i)),
6 the person who is identified among all
7 such reports as making the largest
8 such payment.
9 "(II) If any report filed by any
10 organization with respect to the inde-
11 pendent expenditure under section
12 304 includes information on any per-
13 son who made a payment to the orga-
14 nization in an amount equal to or ex-
15 ceeding $100,000 which was des-
16 ignated by the person to be used for
17 campaign-related activity with respect
18 to the same election or in support of
19 the same candidate (as required to be
20 included in the report under section
21 304(g)(5)(A)(i)) but subclause (I)
22 does not apply, the person who is
23 identified among all such reports as
24 making the largest such payment.

1 "(III) If any report filed by any
2 organization with respect to the inde-
3 pendent expenditure under section
4 304 includes information on any per-
5 son who made a payment to the orga-
6 nization which was provided for the
7 purpose of being used for campaign-
8 related activity or in response to a so-
9 licitation for funds to be used for
10 campaign-related activity (as required
11 to be included in the report under sec-
12 tion 304(g)(5)(A)(i)) but subclause (I)
13 or subclause (II) does not apply, the
14 person who is identified among all
15 such reports as making the largest
16 such payment.
17 "(IV) If none of the reports filed
18 by any organization with respect to
19 the independent expenditure under
20 section 304 includes information on
21 any person (other than the organiza-
22 tion) who made a payment to the or-
23 ganization which was provided for the
24 purpose of being used for campaign-
25 related activity or in response to a so-

1 licitation for funds to be used for
2 campaign-related activity, but any of
3 such reports includes information on
4 any person who made an unrestricted
5 donor payment to the organization (as
6 required to be included in the report
7 under section 304(g)(5)(A)(ii)), the
8 person who is identified among all
9 such reports as making the largest
10 such unrestricted donor payment.
11 "(ii) ELECTIONEERING COMMUNICA-
12 TIONS.—For purposes of this paragraph,
13 the 'significant funder' with respect to an
14 electioneering communication paid for in
15 whole or in part with a payment which is
16 treated as a disbursement by a covered or-
17 ganization for campaign-related activity
18 under section 325, shall be determined as
19 follows:
20 "(I) If any report filed by any or-
21 ganization with respect to the elec-
22 tioneering communication under sec-
23 tion 304 includes information on any
24 person who made a payment to the
25 organization in an amount equal to or

1 exceeding $100,000 which was des-
2 ignated by the person to be used for
3 campaign-related activity consisting of
4 that specific electioneering commu-
5 nication (as required to be included in
6 the report under section
7 304(f)(6)(A)(i)), the person who is
8 identified among all such reports as
9 making the largest such payment.
10 "(II) If any report filed by any
11 organization with respect to the elec-
12 tioneering communication under sec-
13 tion 304 includes information on any
14 person who made a payment to the
15 organization in an amount equal to or
16 exceeding $100,000 which was des-
17 ignated by the person to be used for
18 campaign-related activity with respect
19 to the same election or in support of
20 the same candidate (as required to be
21 included in the report under section
22 304(f)(6)(A)(i)) but subclause (I)
23 does not apply, the person who is
24 identified among all such reports as
25 making the largest such payment.

1 "(III) If any report filed by any
2 organization with respect to the elec-
3 tioneering communication under sec-
4 tion 304 includes information on any
5 person who made a payment to the
6 organization which was provided for
7 the purpose of being used for cam-
8 paign-related activity or in response to
9 a solicitation for funds to be used for
10 campaign-related activity (as required
11 to be included in the report under sec-
12 tion 304(f)(6)(A)(i)) but subclause (I)
13 or subclause (II) does not apply, the
14 person who is identified among all
15 such reports as making the largest
16 such payment.
17 "(IV) If none of the reports filed
18 by any organization with respect to
19 the electioneering communication
20 under section 304 includes informa-
21 tion on any person who made a pay-
22 ment to the organization which was
23 provided for the purpose of being used
24 for campaign-related activity or in re-
25 sponse to a solicitation for funds to be

1 used for campaign-related activity, but
2 any of such reports includes informa-
3 tion on any person who made an unre-
4 stricted donor payment to the organi-
5 zation (as required to be included in
6 the report under section
7 304(f)(6)(A)(ii)), the person who is
8 identified among all such reports as
9 making the largest such unrestricted
10 donor payment.

11 "(5) TOP 5 FUNDERS LIST DESCRIBED.—With
12 respect to a communication paid for in whole or in
13 part with a payment which is treated as a disburse-
14 ment by a covered organization for campaign-related
15 activity under section 325, the Top 5 Funders list
16 described in this paragraph is—

17 "(A) in the case of a disbursement for an
18 independent expenditure consisting of a public
19 communication, a list of the 5 persons who pro-
20 vided the largest payments of any type which
21 are required under section 304(g)(5)(A) to be
22 included in the reports filed by any organization
23 with respect to that independent expenditure
24 under section 304, together with the amount of
25 the payments each such person provided; or

1 "(B) in the case of a disbursement for an
2 electioneering communication, a list of the 5
3 persons who provided the largest payments of
4 any type which are required under section
5 304(f)(6)(A) to be included in the reports filed
6 by any organization with respect to that elec-
7 tioneering communication under section 304,
8 together with the amount of the payments each
9 such person provided.
10 "(6) METHOD OF CONVEYANCE OF STATE-
11 MENT.—
12 "(A) COMMUNICATIONS TRANSMITTED
13 THROUGH RADIO.—In the case of a communica-
14 tion to which this subsection applies which is
15 transmitted through radio, the disclosure state-
16 ments required under paragraph (1) shall be
17 made by audio by the applicable individual in a
18 clearly spoken manner.
19 "(B) COMMUNICATIONS TRANSMITTED
20 THROUGH TELEVISION.—In the case of a com-
21 munication to which this subsection applies
22 which is transmitted through television, the in-
23 formation required under paragraph (1)—
24 "(i) shall appear in writing at the end
25 of the communication in a clearly readable

1 manner, with a reasonable degree of color
2 contrast between the background and the
3 printed statement, for a period of at least
4 6 seconds; and
5 "(ii) except in the case of a Top 5
6 Funders list described in paragraph (5),
7 shall also be conveyed by an unobscured,
8 full-screen view of the applicable indi-
9 vidual, or by the applicable individual mak-
10 ing the statement in voice-over accom-
11 panied by a clearly identifiable photograph
12 or similar image of the individual.
13 "(7) APPLICABLE INDIVIDUAL DEFINED.—In
14 this subsection, the term 'applicable individual'
15 means, with respect to a communication to which
16 this paragraph applies—
17 "(A) if the communication is paid for by
18 an individual or if the significant funder of the
19 communication under paragraph (4) is an indi-
20 vidual, the individual involved;
21 "(B) if the communication is paid for by a
22 corporation or if the significant funder of the
23 communication under paragraph (4) is a cor-
24 poration, the chief executive officer of the cor-
25 poration (or, if the corporation does not have a

1 chief executive officer, the highest ranking offi-
2 cial of the corporation);
3 "(C) if the communication is paid for by a
4 labor organization or if the significant funder of
5 the communication under paragraph (4) is a
6 labor organization, the highest ranking officer
7 of the labor organization; or
8 "(D) if the communication is paid for by
9 any other person or if the significant funder of
10 the communication under paragraph (4) is any
11 other person, the highest ranking official of
12 such person.
13 "(8) COVERED ORGANIZATION DEFINED.—In
14 this subsection, the term 'covered organization'
15 means any of the following:
16 "(A) Any corporation which is subject to
17 section 316(a).
18 "(B) Any labor organization (as defined in
19 section 316).
20 "(C) Any organization described in para-
21 graph (4), (5), or (6) of section 501(c) of the
22 Internal Revenue Code of 1986 and exempt
23 from tax under section 501(a) of such Code.

"(D) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.

"(9) OTHER DEFINITIONS.—In this subsection, the terms 'campaign-related activity' and 'unrestricted donor payment' have the meaning given such terms in section 325.".

Subtitle C—Reporting Requirements for Registered Lobbyists

SEC. 221. REQUIRING REGISTERED LOBBYISTS TO REPORT INFORMATION ON INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS.

(a) IN GENERAL.—Section 5(d)(1) of the Lobbying Disclosure Act of 1995 (2 U.S.C. 1604(d)(1)) is amended—

(1) by striking "and" at the end of subparagraph (F);

(2) by redesignating subparagraph (G) as subparagraph (I); and

(3) by inserting after subparagraph (F) the following new subparagraphs:

"(G) the amount of any independent expenditure (as defined in section 301(17) of the Federal Election Campaign Act of 1971 (2

1 U.S.C. 431(17)) equal to or greater than
2 $1,000 made by such person or organization,
3 and for each such expenditure the name of each
4 candidate being supported or opposed and the
5 amount spent supporting or opposing each such
6 candidate;
7 "(H) the amount of any electioneering
8 communication (as defined in section 304(f)(3)
9 of such Act (2 U.S.C. 434(f)(3)) equal to or
10 greater than $1,000 made by such person or or-
11 ganization, and for each such communication
12 the name of the candidate referred to in the
13 communication and whether the communication
14 involved was in support of or in opposition to
15 the candidate; and".
16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to reports for semi-
18 annual periods described in section 5(d)(1) of the Lob-
19 bying Disclosure Act of 1995 that begin after the date
20 of the enactment of this Act.

TITLE III—DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY

SEC. 301. REQUIRING DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY.

Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.), as amended by section 213, is amended by adding at the end the following new section:

"SEC. 327. DISCLOSURES BY COVERED ORGANIZATIONS TO SHAREHOLDERS, MEMBERS, AND DONORS OF INFORMATION ON DISBURSEMENTS FOR CAMPAIGN-RELATED ACTIVITY.

"(a) INCLUDING INFORMATION IN REGULAR PERIODIC REPORTS.—

"(1) IN GENERAL.—A covered organization which submits regular, periodic reports to its shareholders, members, or donors on its finances or activities shall include in each such report the information described in paragraph (2) with respect to the disbursements made by the organization for campaign-related activity during the period covered by the report.

1 "(2) INFORMATION DESCRIBED.—The informa-
2 tion described in this paragraph is, for each dis-
3 bursement for campaign-related activity—
4 "(A) the date of the independent expendi-
5 ture or electioneering communication involved;
6 "(B) the amount of the independent ex-
7 penditure or electioneering communication in-
8 volved;
9 "(C) the name of the candidate identified
10 in the independent expenditure or electioneering
11 communication involved, the office sought by
12 the candidate, and (if applicable) whether the
13 independent expenditure or electioneering com-
14 munication involved was in support of or in op-
15 position to the candidate;
16 "(D) in the case of a transfer of funds to
17 another person, the information required by
18 subparagraphs (A) through (C), as well as the
19 name of the recipient of the funds and the date
20 and amount of the funds transferred;
21 "(E) the source of such funds; and
22 "(F) such other information as the Com-
23 mission determines is appropriate to further the
24 purposes of this subsection.

1 "(b) PUBLIC DISSEMINATION OF CERTAIN INFORMA-
2 TION.—
3 "(1) INFORMATION INCLUDED IN REPORTS.—
4 "(A) REQUIRING DISSEMINATION.—If a
5 covered organization maintains an Internet site,
6 the organization shall post on such Internet
7 site, in a machine-readable, searchable, sortable,
8 and downloadable manner and through a direct
9 link from the homepage of the organization, the
10 following information:
11 "(i) The information the organization
12 is required to report under section
13 304(g)(5)(A) with respect to public inde-
14 pendent expenditures.
15 "(ii) The information the organization
16 is required to include in a statement of dis-
17 bursements for electioneering communica-
18 tions under section 304(f)(6).
19 "(B) DEADLINE; DURATION OF POST-
20 ING.—The covered organization shall post the
21 information described in subparagraph (A) not
22 later than 24 hours after the organization files
23 the information with the Commission under the
24 applicable provision of this Act, and shall en-
25 sure that the information remains on the

website until the expiration of the 1-year period which begins on the date of the election with respect to which the public independent expenditures or electioneering communications are made.

"(2) INFORMATION ON BREAKDOWN OF DISBURSEMENTS AMONG TYPES OF RECIPIENTS.—

"(A) REQUIRING DISSEMINATION.—If a covered organization maintains an Internet site, the organization shall post on such Internet site, in a machine-readable, searchable, sortable, and downloadable manner and through a direct link from the homepage of the organization, the following information with respect to the aggregate amount of disbursements made by the organization for campaign-related activity during a calendar year:

"(i) A breakdown by political party of the total amount disbursed in support of and in opposition to candidates of each political party.

"(ii) The total amount disbursed in support of or opposition to—

"(I) incumbent candidates;

1 "(II) candidates challenging in-
2 cumbent candidates; and
3 "(III) candidates for election to
4 an office for which no incumbent is
5 seeking re-election.
6 "(B) DEADLINE; DURATION OF POST-
7 ING.—A covered organization shall post the in-
8 formation described in subparagraph (A) with
9 respect to a calendar year not later than the
10 first January 31 which follows that calendar
11 year, and shall ensure that the information re-
12 mains on the website until the end of the cal-
13 endar year in which the information is posted.
14 "(c) COVERED ORGANIZATION DEFINED.—In this
15 section, the term 'covered organization' means any of the
16 following:
17 "(1) Any corporation which is subject to section
18 316(a).
19 "(2) Any labor organization (as defined in sec-
20 tion 316).
21 "(3) Any organization described in paragraph
22 (4), (5), or (6) of section 501(c) of the Internal Rev-
23 enue Code of 1986 and exempt from tax under sec-
24 tion 501(a) of such Code.

"(4) Any political organization under section 527 of the Internal Revenue Code of 1986, other than a political committee under this Act.".

TITLE IV—OTHER PROVISIONS

SEC. 401. JUDICIAL REVIEW.

(a) SPECIAL RULES FOR ACTIONS BROUGHT ON CONSTITUTIONAL GROUNDS.—If any action is brought for declaratory or injunctive relief to challenge the constitutionality of any provision of this Act or any amendment made by this Act, the following rules shall apply:

(1) The action shall be filed in the United States District Court for the District of Columbia, and an appeal from a decision of the District Court may be taken to the Court of Appeals for the District of Columbia Circuit.

(2) A copy of the complaint shall be delivered promptly to the Clerk of the House of Representatives and the Secretary of the Senate.

(3) It shall be the duty of the United States District Court for the District of Columbia, the Court of Appeals for the District of Columbia Circuit, and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of the action and appeal.

1 (b) INTERVENTION BY MEMBERS OF CONGRESS.—In
2 any action in which the constitutionality of any provision
3 of this Act or any amendment made by this Act is raised,
4 any member of the House of Representatives (including
5 a Delegate or Resident Commissioner to the Congress) or
6 Senate shall have the right to intervene either in support
7 of or opposition to the position of a party to the case re-
8 garding the constitutionality of the provision or amend-
9 ment. To avoid duplication of efforts and reduce the bur-
10 dens placed on the parties to the action, the court in any
11 such action may make such orders as it considers nec-
12 essary, including orders to require intervenors taking simi-
13 lar positions to file joint papers or to be represented by
14 a single attorney at oral argument.

15 (c) CHALLENGE BY MEMBERS OF CONGRESS.—Any
16 Member of the House of Representatives (including a Del-
17 egate or Resident Commissioner to the Congress) or Sen-
18 ate may bring an action, subject to the special rules de-
19 scribed in subsection (a), for declaratory or injunctive re-
20 lief to challenge the constitutionality of any provision of
21 this Act or any amendment made by this Act.

22 **SEC. 402. SEVERABILITY.**

23 If any provision of this Act or amendment made by
24 this Act, or the application of a provision or amendment
25 to any person or circumstance, is held to be unconstitu-

1 tional, the remainder of this Act and amendments made
2 by this Act, and the application of the provisions and
3 amendment to any person or circumstance, shall not be
4 affected by the holding.

5 **SEC. 403. EFFECTIVE DATE.**

6 Except as otherwise provided, this Act and the
7 amendments made by this Act shall take effect upon the
8 expiration of the 30-day period which begins on the date
9 of the enactment of this Act, and shall take effect without
10 regard to whether or not the Federal Election Commission
11 has promulgated regulations to carry out such amend-
12 ments.

○

The CHAIRMAN. The Chair now offers an amendment in the nature of a substitute which is before the members. Without objection the substitute is considered as read.

[The information follows:]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 5175

OFFERED BY _____

Strike all after the enacting clause and insert the following:

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
3 "Democracy is Strengthened by Casting Light on Spend-
4 ing in Elections Act" or the "DISCLOSE Act".

5 (b) TABLE OF CONTENTS.—The table of contents of
6 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—REGULATION OF CERTAIN POLITICAL SPENDING

Sec. 101. Prohibiting independent expenditures and electioneering communications by government contractors.
Sec. 102. Application of ban on contributions and expenditures by foreign nationals to foreign-controlled domestic corporations.
Sec. 103. Treatment of payments for coordinated communications as contributions.
Sec. 104. Treatment of political party communications made on behalf of candidates.

TITLE II—PROMOTING EFFECTIVE DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY

Subtitle A—Treatment of Independent Expenditures and Electioneering Communications Made by All Persons

Sec. 201. Independent expenditures.
Sec. 202. Electioneering communications.

Subtitle B—Expanded Requirements for Corporations and Other Organizations

Sec. 211. Additional information required to be included in reports on disbursements by covered organizations.
Sec. 212. Rules regarding use of general treasury funds by covered organizations for campaign-related activity.
Sec. 213. Optional use of separate account by covered organizations for campaign-related activity.
Sec. 214. Modification of rules relating to disclaimer statements required for certain communications.

Subtitle C—Reporting Requirements for Registered Lobbyists

Sec. 221. Requiring registered lobbyists to report information on independent expenditures and electioneering communications.

TITLE III—DISCLOSURE BY COVERED ORGANIZATIONS OF INFORMATION ON CAMPAIGN-RELATED ACTIVITY

Sec. 301. Requiring disclosure by covered organizations of information on campaign-related activity.

TITLE IV—OTHER PROVISIONS

Sec. 401. Judicial review.
Sec. 402. Severability.
Sec. 403. Effective date.

1 **SEC. 2. FINDINGS.**

2 (a) GENERAL FINDINGS.—Congress finds and de-
3 clares as follows:

4 (1) Throughout the history of the United
5 States, the American people have been rightly con-
6 cerned about the power of special interests to control
7 our democratic processes. That was true over 100
8 years ago when Congress first enacted legislation in-
9 tended to restrict corporate funds from being used
10 in Federal elections, legislation that Congress
11 amended in 1947 to expressly include independent
12 expenditures. The Supreme Court held such legisla-
13 tion to be constitutional in 1990 in Austin v. Michi-
14 gan Chamber of Commerce (494 U.S. 652) and

1 again in 2003 in McConnell v. F.E.C. (540 U.S.
2 93).
3 (2) The Supreme Court's decision in *Citizens*
4 *United v. Federal Election Commission* on January
5 21, 2010, invalidated legislation restricting the abil-
6 ity of corporations and labor unions to spend funds
7 from their general treasury accounts to influence the
8 outcome of elections.
9 (b) FINDINGS RELATING TO GOVERNMENT CON-
10 TRACTORS.—Congress finds and declares as follows:
11 (1) Government contracting is an activity that
12 is particularly susceptible to improper influence, and
13 to the appearance of improper influence. Govern-
14 ment contracts must be awarded based on an objec-
15 tive evaluation of how well bidders or potential con-
16 tractors meet relevant statutory criteria.
17 (2) Independent expenditures and electioneering
18 communications that benefit particular candidates or
19 elected officials or disfavor their opponents can lead
20 to apparent and actual ingratiation, access, influ-
21 ence, and quid pro quo arrangements. Government
22 contracts should be awarded based on an objective
23 application of statutory criteria, not based on other
24 forms of inappropriate or corrupting influence.

1 (3) Prohibiting independent expenditures and
2 electioneering communications by persons negoti-
3 ating for or performing government contracts will
4 prevent government officials involved in or with in-
5 fluence over the contracting process from influencing
6 the contracting process based, consciously or other-
7 wise, on this kind of inappropriate or corrupting in-
8 fluence.
9 (4) Prohibiting independent expenditures and
10 electioneering communications by persons negoti-
11 ating for or performing government contracts will
12 likewise prevent such persons from feeling pressure,
13 whether actually exerted by government officials or
14 not, to make expenditures and to fund communica-
15 tions in order to maximize their chances of receiving
16 contracts, or to match similar expenditures and com-
17 munications made by their competitors.
18 (5) Furthermore, because government contracts
19 often involve large amounts of public money, it is
20 critical that the public perceive that the government
21 contracts are awarded strictly in accordance with
22 prescribed statutory standards, and not based on
23 other forms of inappropriate or corrupting influence.
24 The public's confidence in government is under-
25 mined when corporations that make significant ex-

1 penditures during Federal election campaigns later
2 receive government funds.
3 (6) Prohibiting independent expenditures and
4 electioneering communications by persons negoti-
5 ating for or performing government contracts will
6 prevent any appearance that government contracts
7 were awarded based in whole or in part on such ex-
8 penditures or communications, or based on the inap-
9 propriate or corrupting influence such expenditures
10 and communications can create and appear to cre-
11 ate.
12 (7) In these ways, prohibiting independent ex-
13 penditures and electioneering communications by
14 persons negotiating for or performing government
15 contracts will protect the actual and perceived integ-
16 rity of the government contracting process.
17 (8) Moreover, the risks of waste, fraud and
18 abuse, all resulting in economic losses to taxpayers,
19 are significant when would-be public contractors or
20 applicants for public funds make expenditures in
21 Federal election campaigns in order to affect elec-
22 toral outcomes.
23 (c) FINDINGS RELATING TO FOREIGN CORPORA-
24 TIONS.—Congress finds and declares as follows:

1 (1) The Supreme Court's decision in the Citi-
2 zens United case has provided the means by which
3 United States corporations controlled by foreign en-
4 tities can freely spend money to influence United
5 States elections.
6 (2) Foreign corporations commonly own U.S.
7 corporations in whole or in part, and U.S. corporate
8 equity and debt are also held by foreign individuals,
9 sovereign wealth funds, and even foreign nations at
10 levels which permit effective control over those U.S.
11 entities.
12 (3) As recognized in many areas of the law, for-
13 eign ownership interests and influences are exerted
14 in a perceptible way even when the entity is not ma-
15 jority-foreign-owned.
16 (4) The Federal Government has broad con-
17 stitutional power to protect American interests and
18 sovereignty from foreign interference and intrusion.
19 (5) Congress has a clear interest in minimizing
20 foreign intervention, and the perception of foreign
21 intervention, in United States elections.
22 (d) FINDINGS RELATING TO COORDINATED EXPEND-
23 ITURES.—Congress finds and declares as follows:
24 (1) It has been the consistent view of Congress
25 and the courts that coordinated expenditures in

1 campaigns for election are no different in nature
2 from contributions.
3 (2) Existing rules still allow donors to evade
4 contribution limits by making campaign expendi-
5 tures which, while technically qualifying as inde-
6 pendent expenditures under law, are for all relevant
7 purposes coordinated with candidates and political
8 parties and thus raise the potential for corruption or
9 the appearance of corruption.
10 (3) Such arrangements have the potential to
11 give rise to the reality or appearance of corruption
12 to the same degree that direct contributions to a
13 candidate may give rise to the reality or appearance
14 of corruption. Moreover, expenditures which are in
15 fact made in coordination with a candidate or polit-
16 ical party have the potential to lessen the public's
17 trust and faith in the rules and the integrity of the
18 electoral process.
19 (4) The government therefore has a compelling
20 interest in making sure that expenditures that are
21 de facto coordinated with a candidate are treated as
22 such to prevent corruption, the appearance of cor-
23 ruption, or the perception that some participants are
24 circumventing the laws and regulations which govern
25 the financing of election campaigns.

1 (e) FINDINGS RELATING TO DISCLOSURES AND DIS-
2 CLAIMERS.—Congress finds and declares as follows:
3 (1) The American people have a compelling in-
4 terest in knowing who is funding independent ex-
5 penditures and electioneering communications to in-
6 fluence Federal elections, and the government has a
7 compelling interest in providing the public with that
8 information. Effective disclaimers and prompt disclo-
9 sure of expenditures, and the disclosure of the fund-
10 ing sources for these expenditures, can provide
11 shareholders, voters, and citizens with the informa-
12 tion needed to evaluate the actions by special inter-
13 ests seeking influence over the democratic process.
14 Transparency promotes accountability, increases the
15 fund of information available to the public concer-
16 ning the support given to candidates by special
17 interests, sheds the light of publicity on political
18 spending, and encourages the leaders of organiza-
19 tions to act only upon legitimate organizational pur-
20 poses.
21 (2) Protecting this compelling interest has be-
22 come particularly important to address the antici-
23 pated increase in special interest spending on elec-
24 tion-related communications which will result from
25 the Supreme Court's decision in the Citizens United

1 case. The current disclosure and disclaimer require-
2 ments were designed for a campaign finance system
3 in which such expenditures were subject to prohibi-
4 tions that no longer apply.
5 (3) More rigorous disclosure and disclaimer re-
6 quirements are necessary to protect against the eva-
7 sion of current rules. Organizations that engage in
8 election-related communications have used a variety
9 of methods to attempt to obscure their sponsorship
10 of communications from the general public. Robust
11 disclosure and disclaimer requirements are necessary
12 to ensure that the electorate is informed about who
13 is paying for particular election-related communica-
14 tions, and so that the shareholders and members of
15 these organizations are aware of their organizations'
16 election-related spending.
17 (4) The current lack of accountability and
18 transparency allow special interest political spending
19 to serve as a private benefit for the officials of spe-
20 cial interest organizations, to the detriment of the
21 organizations and their shareholders and members.
22 (5) Various factors, including the advent of the
23 Internet, where particular communications can be
24 circulated and remain available for viewing long
25 after they are first broadcast, and the frequency of

1 political campaigns that effectively begin long before
2 election day, have also rendered the existing system
3 of disclosure and disclaimer requirements (including
4 the limited time periods during which some of those
5 requirements currently apply) inadequate to protect
6 fully the government's interest in ensuring that the
7 electorate is fully informed about the sources of elec-
8 tion-related spending, and that shareholders and
9 citizens alike have the information they need to hold
10 corporations and elected officials accountable for
11 their positions and supporters.
12 (6) To serve the interests of accountability and
13 transparency, it is also important that information
14 about who is funding independent expenditures and
15 electioneering communications be presented to the
16 electorate in a manner that is readily accessible and
17 that can be quickly and easily understood.
18 (f) FINDINGS RELATING TO CAMPAIGN SPENDING BY
19 LOBBYISTS.—Congress finds and declares as follows:
20 (1) Lobbyists and lobbying organizations, and
21 through them, their clients, influence the public deci-
22 sion-making process in a variety of ways.
23 (2) In recent years, scandals involving undue
24 lobbyist influence have lowered public trust in gov-

1 ernment and jeopardized the willingness of voters to
2 take part in democratic governance.
3 (3) One way in which lobbyists may unduly in-
4 fluence Federal officials is through their or their cli-
5 ents making independent expenditures or election-
6 eering communications targeting elected officials.
7 (4) Disclosure of such independent expenditures
8 and electioneering communications will allow the
9 public to examine connections between such spend-
10 ing and official actions, and will therefore limit the
11 ability of lobbyists to exert an undue influence on
12 elected officials.

13 **TITLE I—REGULATION OF**
14 **CERTAIN POLITICAL SPENDING**

15 **SEC. 101. PROHIBITING INDEPENDENT EXPENDITURES AND**
16 **ELECTIONEERING COMMUNICATIONS BY**
17 **GOVERNMENT CONTRACTORS.**

18 (a) PROHIBITION APPLICABLE TO GOVERNMENT
19 CONTRACTORS.—
20 (1) PROHIBITION.—
21 (A) IN GENERAL.—Section 317(a)(1) of
22 the Federal Election Campaign Act (2 U.S.C.
23 441c(a)(1)) is amended by striking "purpose or
24 use; or" and inserting the following: "purpose
25 or use, to make any independent expenditure,

1 or to disburse any funds for an electioneering
2 communication; or".
3 (B) CONFORMING AMENDMENT.—The
4 heading of section 317 of such Act (2 U.S.C.
5 441c) is amended by striking "CONTRIBU-
6 TIONS" and inserting "CONTRIBUTIONS, INDE-
7 PENDENT EXPENDITURES, AND ELECTION-
8 EERING COMMUNICATIONS".
9 (2) THRESHOLD FOR APPLICATION OF BAN.—
10 Section 317 of such Act (2 U.S.C. 441c) is amend-
11 ed—
12 (A) by redesignating subsections (b) and
13 (c) as subsections (c) and (d); and
14 (B) by inserting after subsection (a) the
15 following new subsection:
16 "(b) To the extent that subsection (a)(1) prohibits
17 a person who enters into a contract described in such sub-
18 section from making any independent expenditure or dis-
19 bursing funds for an electioneering communication, such
20 subsection shall apply only if the value of the contract is
21 equal to or greater than $50,000.".
22 (b) APPLICATION TO RECIPIENTS OF ASSISTANCE
23 UNDER TROUBLED ASSET PROGRAM.—Section 317(a) of
24 such Act (2 U.S.C. 441c(a)) is amended—

1 (1) by striking "or" at the end of paragraph
2 (1);
3 (2) by redesignating paragraph (2) as para-
4 graph (3); and
5 (3) by inserting after paragraph (1) the fol-
6 lowing new paragraph:
7 "(2) who enters into negotiations for financial
8 assistance under title I of the Emergency Economic
9 Stabilization Act of 2008 (12 U.S.C. 5211 et seq.)
10 (relating to the purchase of troubled assets by the
11 Secretary of the Treasury), during the period—
12 "(A) beginning on the later of the com-
13 mencement of the negotiations or the date of
14 the enactment of the Democracy is Strength-
15 ened by Casting Light on Spending in Elections
16 Act; and
17 "(B) ending with the later of the termi-
18 nation of such negotiations or the repayment of
19 such financial assistance;
20 directly or indirectly to make any contribution of
21 money or other things of value, or to promise ex-
22 pressly or impliedly to make any such contribution
23 to any political party, committee, or candidate for
24 public office or to any person for any political pur-
25 pose or use, to make any independent expenditure,

1 or to disburse any funds for an electioneering com-
2 munication; or".
3 (c) TECHNICAL AMENDMENT.—Section 317 of such
4 Act (2 U.S.C. 441c) is amended by striking "section 321"
5 each place it appears and inserting "section 316".
6 **SEC. 102. APPLICATION OF BAN ON CONTRIBUTIONS AND**
7 **EXPENDITURES BY FOREIGN NATIONALS TO**
8 **FOREIGN-CONTROLLED DOMESTIC COR-**
9 **PORATIONS.**
10 (a) APPLICATION OF BAN.—Section 319(b) of the
11 Federal Election Campaign Act of 1971 (2 U.S.C.
12 441e(b)) is amended—
13 (1) by striking "or" at the end of paragraph
14 (1);
15 (2) by striking the period at the end of para-
16 graph (2) and inserting "; or"; and
17 (3) by adding at the end the following new
18 paragraph:
19 "(3) any corporation which is not a foreign na-
20 tional described in paragraph (1) and—
21 "(A) in which a foreign national described
22 in paragraph (1) or (2) directly or indirectly
23 owns 20 percent or more of the voting shares;
24 "(B) with respect to which the majority of
25 the members of the board of directors are for-

1 eign nationals described in paragraph (1) or
2 (2);
3 "(C) over which one or more foreign na-
4 tionals described in paragraph (1) or (2) has
5 the power to direct, dictate, or control the deci-
6 sion-making process of the corporation with re-
7 spect to its interests in the United States; or
8 "(D) over which one or more foreign na-
9 tionals described in paragraph (1) or (2) has
10 the power to direct, dictate, or control the deci-
11 sion-making process of the corporation with re-
12 spect to activities in connection with a Federal,
13 State, or local election, including—
14 "(i) the making of a contribution, do-
15 nation, expenditure, independent expendi-
16 ture, or disbursement for an electioneering
17 communication (within the meaning of sec-
18 tion 304(f)(3)); or
19 "(ii) the administration of a political
20 committee established or maintained by the
21 corporation.".
22 (b) CERTIFICATION OF COMPLIANCE.—Section 319
23 of such Act (2 U.S.C. 441e) is amended by adding at the
24 end the following new subsection:

1 "(c) CERTIFICATION OF COMPLIANCE REQUIRED
2 PRIOR TO CARRYING OUT ACTIVITY.—Prior to the mak-
3 ing of any contribution, donation, expenditure, inde-
4 pendent expenditure, or disbursement for an election-
5 eering communication by a corporation during a year, the
6 chief executive officer of the corporation (or, if the cor-
7 poration does not have a chief executive officer, the high-
8 est ranking official of the corporation), shall file a certifi-
9 cation with the Commission, under penalty of perjury, that
10 the corporation is not prohibited from carrying out such
11 activity under subsection (b)(3), unless the chief executive
12 officer has previously filed such a certification during the
13 year.".
14 (c) NO EFFECT ON SEPARATE SEGREGATED FUNDS
15 OF DOMESTIC CORPORATIONS.—Section 319 of such Act
16 (2 U.S.C. 441e), as amended by subsection (b), is further
17 amended by adding at the end the following new sub-
18 section:
19 "(d) NO EFFECT ON SEPARATE SEGREGATE FUNDS
20 OF DOMESTIC CORPORATIONS.—Nothing in this section
21 shall be construed to prohibit any corporation which is not
22 a foreign national described in paragraph (1) of subsection
23 (b) from establishing and administering a separate seg-
24 regated fund under section 316(b)(2)(C), so long as none
25 of the amounts in the fund are provided by any foreign

1 national described in paragraph (1) or (2) of subsection
2 (b) and no foreign national described in paragraph (1) or
3 (2) of subsection (b) has the power to direct, dictate, or
4 control the establishment or administration of the fund.".
5 (d) NO EFFECT ON OTHER LAWS.—Section 319 of
6 such Act (2 U.S.C. 441e), as amended by subsections (b)
7 and (c), is further amended by adding at the end the fol-
8 lowing new subsection:
9 "(e) NO EFFECT ON OTHER LAWS.—Nothing in this
10 section shall be construed to affect the determination of
11 whether a corporation is treated as a foreign national for
12 purposes of any law other than this Act.".

13 **SEC. 103. TREATMENT OF PAYMENTS FOR COORDINATED**
14 **COMMUNICATIONS AS CONTRIBUTIONS.**

15 (a) IN GENERAL.—Section 301(8)(A) of the Federal
16 Election Campaign Act of 1971 (2 U.S.C. 431(8)(A)) is
17 amended—
18 (1) by striking "or" at the end of clause (i);
19 (2) by striking the period at the end of clause
20 (ii) and inserting "; or"; and
21 (3) by adding at the end the following new
22 clause:
23 "(iii) any payment made by any person
24 (other than a candidate, an authorized com-
25 mittee of a candidate, or a political committee

1 of a political party) for a coordinated commu-
2 nication (as determined under section 324).".
3 (b) COORDINATED COMMUNICATIONS DESCRIBED.—
4 Section 324 of such Act (2 U.S.C. 441k) is amended to
5 read as follows:
6 **"SEC. 324. COORDINATED COMMUNICATIONS.**
7 "(a) COORDINATED COMMUNICATIONS DEFINED.—
8 For purposes of this Act, the term 'coordinated commu-
9 nication' means—
10 "(1) a covered communication which, subject to
11 subsection (c), is made in cooperation, consultation,
12 or concert with, or at the request or suggestion of,
13 a candidate, an authorized committee of a candidate,
14 or a political committee of a political party; or
15 "(2) any communication that republishes, dis-
16 seminates, or distributes, in whole or in part, any
17 broadcast or any written, graphic, or other form of
18 campaign material prepared by a candidate, an au-
19 thorized committee of a candidate, or their agents.
20 "(b) COVERED COMMUNICATION DEFINED.—
21 "(1) IN GENERAL.—Except as provided in para-
22 graph (4), for purposes of this subsection, the term
23 'covered communication' means, for purposes of the
24 applicable election period described in paragraph (2),
25 a public communication (as defined in section

1 301(22)) that refers to a clearly identified candidate
2 for Federal office and is publicly distributed or pub-
3 licly disseminated during such period.
4 "(2) APPLICABLE ELECTION PERIOD.—For
5 purposes of paragraph (1), the 'applicable election
6 period' with respect to a communication means—
7 "(A) in the case of a communication which
8 refers to a candidate for the office of President
9 or Vice President, the period—
10 "(i) beginning with the date that is
11 120 days before the date of the first pri-
12 mary election, preference election, or nomi-
13 nating convention for nomination for the
14 office of President which is held in any
15 State; and
16 "(ii) ending with the date of the gen-
17 eral election for such office; or
18 "(B) in the case of a communication which
19 refers to a candidate for any other Federal of-
20 fice, the period—
21 "(i) beginning with the date that is 90
22 days before the earliest of the primary
23 election, preference election, or nominating
24 convention with respect to the nomination

1 for the office that the candidate is seeking;
2 and
3 "(ii) ending with the date of the gen-
4 eral election for such office.
5 "(3) SPECIAL RULE FOR PUBLIC DISTRIBUTION
6 OF COMMUNICATIONS INVOLVING CONGRESSIONAL
7 CANDIDATES.—For purposes of paragraph (1), in
8 the case of a communication involving a candidate
9 for an office other than President or Vice President,
10 the communication shall be considered to be publicly
11 distributed or publicly disseminated only if the dis-
12 semination or distribution occurs in the jurisdiction
13 of the office that the candidate is seeking.
14 "(4) EXCEPTION.—The term 'covered commu-
15 nication' does not include—
16 "(A) a communication appearing in a news
17 story, commentary, or editorial distributed
18 through the facilities of any broadcasting sta-
19 tion, newspaper, magazine, or other periodical
20 publication, unless such facilities are owned or
21 controlled by any political party, political com-
22 mittee, or candidate; or
23 "(B) a communication which constitutes a
24 candidate debate or forum conducted pursuant
25 to the regulations adopted by the Commission

1 to carry out section 304(f)(3)(B)(iii), or which
2 solely promotes such a debate or forum and is
3 made by or on behalf of the person sponsoring
4 the debate or forum.

5 "(c) NO FINDING OF COORDINATION BASED SOLELY
6 ON SHARING OF INFORMATION REGARDING LEGISLATIVE
7 OR POLICY POSITION.—For purposes of subsection (a)(1),
8 a covered communication may not be considered to be
9 made in cooperation, consultation, or concert with, or at
10 the request or suggestion of, a candidate, an authorized
11 committee of a candidate, or a political committee of a
12 political party solely on the grounds that a person provided
13 information to the candidate or committee regarding that
14 person's position on a legislative or policy matter (includ-
15 ing urging the candidate or party to adopt that person's
16 position), so long as there is no discussion between the
17 person and the candidate or committee regarding any
18 campaign for election for Federal office.

19 "(d) PRESERVATION OF CERTAIN SAFE HARBORS
20 AND FIREWALLS.—Nothing in this section may be con-
21 strued to affect 11 CFR 109.21(g) or (h), as in effect on
22 the date of the enactment of the Democracy is Strength-
23 ened by Casting Light on Spending in Elections Act.

24 "(e) TREATMENT OF COORDINATION WITH POLIT-
25 ICAL PARTIES FOR COMMUNICATIONS REFERRING TO

1 CANDIDATES.—For purposes of this section, if a commu-
2 nication which refers to any clearly identified candidate
3 or candidates of a political party or any opponent of such
4 a candidate or candidates is determined to have been made
5 in cooperation, consultation, or concert with or at the re-
6 quest or suggestion of a political committee of the political
7 party but not in cooperation, consultation, or concert with
8 or at the request or suggestion of such clearly identified
9 candidate or candidates, the communication shall be treat-
10 ed as having been made in cooperation, consultation, or
11 concert with or at the request or suggestion of the political
12 committee of the political party but not with or at the
13 request or suggestion of such clearly identified candidate
14 or candidates.".

15 (c) EFFECTIVE DATE.—

16 (1) IN GENERAL.—This section and the amend-
17 ments made by this section shall apply with respect
18 to payments made on or after the expiration of the
19 30-day period which begins on the date of the enact-
20 ment of this Act, without regard to whether or not
21 the Federal Election Commission has promulgated
22 regulations to carry out such amendments.

23 (2) TRANSITION RULE FOR ACTIONS TAKEN
24 PRIOR TO ENACTMENT.—No person shall be consid-
25 ered to have made a payment for a coordinated com-

1 munication under section 324 of the Federal Elec-
2 tion Campaign Act of 1971 (as amended by sub-
3 section (b)) by reason of any action taken by the
4 person prior to the date of the enactment of this
5 Act. Nothing in the previous sentence shall be con-
6 strued to affect any determination under any other
7 provision of such Act which is in effect on the date
8 of the enactment of this Act regarding whether a
9 communication is made in cooperation, consultation,
10 or concert with, or at the request or suggestion of,
11 a candidate, an authorized committee of a candidate,
12 or a political committee of a political party.

13 **SEC. 104. TREATMENT OF POLITICAL PARTY COMMUNICA-**
14 **TIONS MADE ON BEHALF OF CANDIDATES.**

15 (a) TREATMENT OF PAYMENT FOR PUBLIC COMMU-
16 NICATION AS CONTRIBUTION IF MADE UNDER CONTROL
17 OR DIRECTION OF CANDIDATE.—Section 301(8)(A) of the
18 Federal Election Campaign Act of 1971 (2 U.S.C.
19 431(8)(A)), as amended by section 103(a), is amended—
20 (1) by striking "or" at the end of clause (ii);
21 (2) by striking the period at the end of clause
22 (iii) and inserting "; or"; and
23 (3) by adding at the end the following new
24 clause:

1 "(iv) any payment by a political committee
2 of a political party for the direct costs of a pub-
3 lic communication (as defined in paragraph
4 (22)) made on behalf of a candidate for Federal
5 office who is affiliated with such party, but only
6 if the communication is controlled by, or made
7 at the direction of, the candidate or an author-
8 ized committee of the candidate.".
9 (b) REQUIRING CONTROL OR DIRECTION BY CAN-
10 DIDATE FOR TREATMENT AS COORDINATED PARTY EX-
11 PENDITURE.—
12 (1) IN GENERAL.—Paragraph (4) of section
13 315(d) of such Act (2 U.S.C. 441a(d)) is amended
14 to read as follows:
15 "(4) SPECIAL RULE FOR DIRECT COSTS OF COMMU-
16 NICATIONS.—The direct costs incurred by a political com-
17 mittee of a political party for a communication made in
18 connection with the campaign of a candidate for Federal
19 office shall not be subject to the limitations contained in
20 paragraphs (2) and (3) unless the communication is con-
21 trolled by, or made at the direction of, the candidate or
22 an authorized committee of the candidate.".
23 (2) CONFORMING AMENDMENT.—Paragraph (1)
24 of section 315(d) of such Act (2 U.S.C. 441a(d)) is

1 amended by striking "paragraphs (2), (3), and (4)"
2 and inserting "paragraphs (2) and (3)".
3 (c) EFFECTIVE DATE.—This section and the amend-
4 ments made by this section shall apply with respect to pay-
5 ments made on or after the expiration of the 30-day period
6 which begins on the date of the enactment of this Act,
7 without regard to whether or not the Federal Election
8 Commission has promulgated regulations to carry out
9 such amendments.

10 TITLE II—PROMOTING EFFEC-
11 TIVE DISCLOSURE OF CAM-
12 PAIGN-RELATED ACTIVITY

13 Subtitle A—Treatment of Inde-
14 pendent Expenditures and Elec-
15 tioneering Communications
16 Made by All Persons

17 **SEC. 201. INDEPENDENT EXPENDITURES.**

18 (a) REVISION OF DEFINITION.—Subparagraph (A) of
19 section 301(17) of the Federal Election Campaign Act of
20 1971 (2 U.S.C. 431(17)) is amended to read as follows:
21 "(A) that, when taken as a whole, ex-
22 pressly advocates the election or defeat of a
23 clearly identified candidate, or is the functional
24 equivalent of express advocacy because it can be
25 interpreted by a reasonable person only as ad-

1 vocating the election or defeat of a candidate,
2 taking into account whether the communication
3 involved mentions a candidacy, a political party,
4 or a challenger to a candidate, or takes a posi-
5 tion on a candidate's character, qualifications,
6 or fitness for office; and".

7 (b) UNIFORM 24-HOUR REPORTING FOR PERSONS
8 MAKING INDEPENDENT EXPENDITURES EXCEEDING
9 $10,000 AT ANY TIME.—Section 304(g) of such Act (2
10 U.S.C. 434(g)) is amended by striking paragraphs (1) and
11 (2) and inserting the following:

12 "(1) INDEPENDENT EXPENDITURES EXCEED-
13 ING THRESHOLD AMOUNT.—

14 "(A) INITIAL REPORT.—A person (includ-
15 ing a political committee) that makes or con-
16 tracts to make independent expenditures in an
17 aggregate amount equal to or greater than the
18 threshold amount described in paragraph (2)
19 shall electronically file a report describing the
20 expenditures within 24 hours.

21 "(B) ADDITIONAL REPORTS.—After a per-
22 son files a report under subparagraph (A), the
23 person shall electronically file an additional re-
24 port within 24 hours after each time the person
25 makes or contracts to make independent ex-

1 penditures in an aggregate amount equal to or
2 greater than the threshold amount with respect
3 to the same election as that to which the initial
4 report relates.
5 "(2) THRESHOLD AMOUNT DESCRIBED.—In
6 paragraph (1), the 'threshold amount' means—
7 "(A) during the period up to and including
8 the 20th day before the date of an election,
9 $10,000; or
10 "(B) during the period after the 20th day,
11 but more than 24 hours, before the date of an
12 election, $1,000.
13 "(3) PUBLIC AVAILABILITY.—Notwithstanding
14 any other provision of this section, the Commission
15 shall ensure that the information required to be dis-
16 closed under this subsection is publicly available
17 through the Commission website not later than 24
18 hours after receipt in a manner that is downloadable
19 in bulk and machine readable.".
20 (c) EFFECTIVE DATE.—
21 (1) IN GENERAL.—The amendment made by
22 subsection (a) shall apply with respect to contribu-
23 tions and expenditures made on or after the expira-
24 tion of the 30-day period which begins on the date
25 of the enactment of this Act, without regard to

1 whether or not the Federal Election Commission has
2 promulgated regulations to carry out such amend-
3 ments.
4 (2) REPORTING REQUIREMENTS.—The amend-
5 ment made by subsection (b) shall apply with re-
6 spect to reports required to be filed after the date
7 of the enactment of this Act.

8 **SEC. 202. ELECTIONEERING COMMUNICATIONS.**

9 (a) EXPANSION OF PERIOD COVERING GENERAL
10 ELECTION.—Section 304(f)(3)(A)(i)(II)(aa) of the Fed-
11 eral Election Campaign Act of 1971 (2 U.S.C.
12 434(f)(3)(A)(i)(II)(aa)) is amended by striking "60 days"
13 and inserting "120 days".
14 (b) MANDATORY ELECTRONIC FILING.—Section
15 304(f)(1) of such Act (2 U.S.C. 434(f)(1)) is amended—
16 (1) by striking "file with" and inserting "elec-
17 tronically file with"; and
18 (2) by adding at the end the following new sen-
19 tence: "Notwithstanding any other provision of this
20 section, the Commission shall ensure that the infor-
21 mation required to be disclosed under this subsection
22 is publicly available through the Commission website
23 not later than 24 hours after receipt in a manner
24 that is downloadable in bulk and machine read-
25 able.".

1 (c) EFFECTIVE DATE; TRANSITION FOR COMMUNICA-
2 TIONS MADE PRIOR TO ENACTMENT.—The amendment
3 made by subsection (a) shall apply with respect to commu-
4 nications made on or after the date of the enactment of
5 this Act, without regard to whether or not the Federal
6 Election Commission has promulgated regulations to carry
7 out such amendments, except that no communication
8 which is made prior to the date of the enactment of this
9 Act shall be treated as an electioneering communication
10 under section 304(f)(3)(A)(i)(II) of the Federal Election
11 Campaign Act of 1971 (as amended by subsection (a)) un-
12 less the communication would be treated as an election-
13 eering communication under such section if the amend-
14 ment made by subsection (a) did not apply.

15 Subtitle A—Expanded Require-
16 ments for Corporations and
17 Other Organizations

18 SEC. 211. ADDITIONAL INFORMATION REQUIRED TO BE IN-
19 CLUDED IN REPORTS ON DISBURSEMENTS BY
20 COVERED ORGANIZATIONS.

21 (a) INDEPENDENT EXPENDITURE REPORTS.—Sec-
22 tion 304(g) of the Federal Election Campaign Act of 1971
23 (2 U.S.C. 434(g)) is amended by adding at the end the
24 following new paragraph:

1 "(5) DISCLOSURE OF ADDITIONAL INFORMA-
2 TION BY COVERED ORGANIZATIONS MAKING PAY-
3 MENTS FOR PUBLIC INDEPENDENT EXPENDI-
4 TURES.—
5 "(A) ADDITIONAL INFORMATION.—If a
6 covered organization makes or contracts to
7 make public independent expenditures in an ag-
8 gregate amount equal to or exceeding $10,000
9 in a calendar year, the report filed by the orga-
10 nization under this subsection shall include, in
11 addition to the information required under
12 paragraph (3), the following information:
13 "(i) If any person made a donation or
14 payment to the covered organization dur-
15 ing the covered organization reporting pe-
16 riod which was provided for the purpose of
17 being used for campaign-related activity or
18 in response to a solicitation for funds to be
19 used for campaign-related activity—
20 "(I) subject to subparagraph (C),
21 the identification of each person who
22 made such donations or payments in
23 an aggregate amount equal to or ex-
24 ceeding $600 during such period, pre-
25 sented in the order of the aggregate

1 amount of donations or payments
2 made by such persons during such pe-
3 riod (with the identification of the
4 person making the largest donation or
5 payment appearing first); and
6 "(II) if any person identified
7 under subclause (I) designated that
8 the donation or payment be used for
9 campaign-related activity with respect
10 to a specific election or in support of
11 a specific candidate, the name of the
12 election or candidate involved, and if
13 any such person designated that the
14 donation or payment be used for a
15 specific public independent expendi-
16 ture, a description of the expenditure.
17 "(ii) The identification of each person
18 who made unrestricted donor payments to
19 the organization during the covered organi-
20 zation reporting period—
21 "(I) in an aggregate amount
22 equal to or exceeding $600 during
23 such period, if any of the disburse-
24 ments made by the organization for
25 any of the public independent expendi-

1 tures which are covered by the report
2 were not made from the organization's
3 Campaign-Related Activity Account
4 under section 326; or
5 "(II) in an aggregate amount
6 equal to or exceeding $6,000 during
7 such period, if the disbursements
8 made by the organization for all of
9 the public independent expenditures
10 which are covered by the report were
11 made exclusively from the organiza-
12 tion's Campaign-Related Activity Ac-
13 count under section 326 (but only if
14 the organization has made deposits
15 described in subparagraph (D) of sec-
16 tion 326(a)(2) into that Account dur-
17 ing such period in an aggregate
18 amount equal to or greater than
19 $10,000),
20 presented in the order of the aggregate
21 amount of payments made by such persons
22 during such period (with the identification
23 of the person making the largest payment
24 appearing first).

1 "(B) TREATMENT OF TRANSFERS MADE
2 TO OTHER PERSONS.—
3 "(i) IN GENERAL.—For purposes of
4 the requirement to file reports under this
5 subsection (including the requirement
6 under subparagraph (A) to include addi-
7 tional information in such reports), a cov-
8 ered organization which transfers amounts
9 to another person (other than the covered
10 organization itself) for the purpose of mak-
11 ing a public independent expenditure by
12 that person or by any other person, or (in
13 accordance with clause (ii)) which is
14 deemed to have transferred amounts to an-
15 other person (other than the covered orga-
16 nization itself) for the purpose of making
17 a public independent expenditure by that
18 person or by any other person, shall be
19 considered to have made a public inde-
20 pendent expenditure.
21 "(ii) RULES FOR DEEMING TRANS-
22 FERS MADE FOR PURPOSE OF MAKING EX-
23 PENDITURES.—For purposes of clause (i),
24 in determining whether a covered organiza-
25 tion or any other person who transfers

1 amounts to another person shall be deemed
2 to have transferred the amounts for the
3 purpose of making a public independent
4 expenditure, the following rules apply:
5 "(I) The person shall be deemed
6 to have transferred the amounts for
7 the purpose of making a public inde-
8 pendent expenditure if—
9 "(aa) the person designates,
10 requests, or suggests that the
11 amounts be used for public inde-
12 pendent expenditures and the
13 person to whom the amounts
14 were transferred agrees to do so
15 or does so;
16 "(bb) the person making the
17 public independent expenditure
18 or another person acting on that
19 person's behalf expressly solicited
20 the person for a donation or pay-
21 ment for making or paying for
22 any public independent expendi-
23 tures;
24 "(cc) the person and the
25 person to whom the amounts

1 were transferred engaged in sub-
2 stantial written or oral discussion
3 regarding the person either mak-
4 ing, or donating or paying for,
5 any public independent expendi-
6 tures;
7 "(dd) the person or the per-
8 son to whom the amounts were
9 transferred knew or had reason
10 to know of the covered organiza-
11 tion's intent to make public inde-
12 pendent expenditures; or
13 "(ee) the person or the per-
14 son to whom the amounts were
15 transferred made a public inde-
16 pendent expenditure during the
17 2-year period which ends on the
18 date on which the amounts were
19 transferred.
20 "(II) The person shall not be
21 deemed to have transferred the
22 amounts for the purpose of making a
23 public independent expenditure if the
24 transfer was a commercial transaction
25 occurring in the ordinary course of

1 business between the person and the
2 person to whom the amounts were
3 transferred, unless there is affirmative
4 evidence that the amounts were trans-
5 ferred for the purpose of making a
6 public independent expenditure.
7 "(C) EXCLUSION OF AMOUNTS DES-
8 IGNATED FOR OTHER CAMPAIGN-RELATED AC-
9 TIVITY.—For purposes of subparagraph (A)(i),
10 in determining the amount of a donation or
11 payment made by a person which was provided
12 for the purpose of being used for campaign-re-
13 lated activity or in response to a solicitation for
14 funds to be used for campaign-related activity,
15 there shall be excluded any amount which was
16 designated by the person to be used—
17 "(i) for campaign-related activity de-
18 scribed in clause (i) of section
19 325(d)(2)(A) (relating to independent ex-
20 penditures) with respect to a different elec-
21 tion, or with respect to a candidate in a
22 different election, than an election which is
23 the subject of any of the public inde-
24 pendent expenditures covered by the report
25 involved; or

1 "(ii) for any campaign-related activity
2 described in clause (ii) of section
3 325(d)(2)(A) (relating to electioneering
4 communications).
5 "(D) EXCLUSION OF AMOUNTS PAID FROM
6 SEPARATE SEGREGATED FUND.—In deter-
7 mining the amount of public independent ex-
8 penditures made by a covered organization for
9 purposes of this paragraph, there shall be ex-
10 cluded any amounts paid from a separate seg-
11 regated fund established and administered by
12 the organization under section 316(b)(2)(C).
13 "(E) COVERED ORGANIZATION REPORTING
14 PERIOD DESCRIBED.—In this paragraph, the
15 'covered organization reporting period' is, with
16 respect to a report filed by a covered organiza-
17 tion under this subsection—
18 "(i) in the case of the first report filed
19 by a covered organization under this sub-
20 section which includes information required
21 under this paragraph, the shorter of—
22 "(I) the period which begins on
23 the effective date of the Democracy is
24 Strengthened by Casting Light on
25 Spending in Elections Act and ends

1 on the last day covered by the report,
2 or
3 "(II) the 12-month period ending
4 on the last day covered by the report;
5 and
6 "(ii) in the case of any subsequent re-
7 port filed by a covered organization under
8 this subsection which includes information
9 required under this paragraph, the period
10 occurring since the most recent report filed
11 by the organization which includes such in-
12 formation.
13 "(F) COVERED ORGANIZATION DEFINED.—
14 In this paragraph, the term 'covered organiza-
15 tion' means any of the following:
16 "(i) Any corporation which is subject
17 to section 316(a).
18 "(ii) Any labor organization (as de-
19 fined in section 316).
20 "(iii) Any organization described in
21 paragraph (4), (5), or (6) of section 501(c)
22 of the Internal Revenue Code of 1986 and
23 exempt from tax under section 501(a) of
24 such Code.

1 "(iv) Any political organization under
2 section 527 of the Internal Revenue Code
3 of 1986, other than a political committee
4 under this Act.
5 "(G) OTHER DEFINITIONS.—In this para-
6 graph—
7 "(i) the terms 'campaign-related activ-
8 ity' and 'unrestricted donor payment' have
9 the meaning given such terms in section
10 325; and
11 "(ii) the term 'public independent ex-
12 penditure' means an independent expendi-
13 ture for a public communication (as de-
14 fined in section 301(22)).".
15 (b) ELECTIONEERING COMMUNICATION REPORTS.—
16 (1) IN GENERAL.—Section 304(f) of such Act
17 (2 U.S.C. 434(f)) is amended—
18 (A) by redesignating paragraphs (6) and
19 (7) as paragraphs (7) and (8); and
20 (B) by inserting after paragraph (5) the
21 end the following new paragraph:
22 "(6) DISCLOSURE OF ADDITIONAL INFORMA-
23 TION BY COVERED ORGANIZATIONS.—
24 "(A) ADDITIONAL INFORMATION.—If a
25 covered organization files a statement under

1 this subsection, the statement shall include, in
2 addition to the information required under
3 paragraph (2), the following information:
4 "(i) If any person made a donation or
5 payment to the covered organization dur-
6 ing the covered organization reporting pe-
7 riod which was provided for the purpose of
8 being used for campaign-related activity or
9 in response to a solicitation for funds to be
10 used for campaign-related activity—
11 "(I) subject to subparagraph (C),
12 the identification of each person who
13 made such donations or payments in
14 an aggregate amount equal to or ex-
15 ceeding $1,000 during such period,
16 presented in the order of the aggre-
17 gate amount of donations or payments
18 made by such persons during such pe-
19 riod (with the identification of the
20 person making the largest donation or
21 payment appearing first); and
22 "(II) if any person identified
23 under subclause (I) designated that
24 the donation or payment be used for
25 campaign-related activity with respect

1 to a specific election or in support of
2 a specific candidate, the name of the
3 election or candidate involved, and if
4 any such person designated that the
5 donation or payment be used for a
6 specific electioneering communication,
7 a description of the communication.
8 "(ii) The identification of each person
9 who made unrestricted donor payments to
10 the organization during the covered organi-
11 zation reporting period—
12 "(I) in an aggregate amount
13 equal to or exceeding $1,000 during
14 such period, if any of the disburse-
15 ments made by the organization for
16 any of the electioneering communica-
17 tions which are covered by the state-
18 ment were not made from the organi-
19 zation's Campaign-Related Activity
20 Account under section 326; or
21 "(II) in an aggregate amount
22 equal to or exceeding $10,000 during
23 such period, if the disbursements
24 made by the organization for all of
25 the electioneering communications

1 which are covered by the statement
2 were made exclusively from the orga-
3 nization's Campaign-Related Activity
4 Account under section 326 (but only
5 if the organization has made deposits
6 described in subparagraph (D) of sec-
7 tion 326(a)(2) into that Account dur-
8 ing such period in an aggregate
9 amount equal to or greater than
10 $10,000),
11 presented in the order of the aggregate
12 amount of payments made by such persons
13 during such period (with the identification
14 of the person making the largest payment
15 appearing first).
16 "(B) TREATMENT OF TRANSFERS MADE
17 TO OTHER PERSONS.—
18 "(i) IN GENERAL.—For purposes of
19 the requirement to file statements under
20 this subsection (including the requirement
21 under subparagraph (A) to include addi-
22 tional information in such statements), a
23 covered organization which transfers
24 amounts to another person (other than the
25 covered organization itself) for the purpose

1 of making an electioneering communication
2 by that person or by any other person, or
3 (in accordance with clause (ii)) which is
4 deemed to have transferred amounts to an-
5 other person (other than the covered orga-
6 nization itself) for the purpose of making
7 an electioneering communication by that
8 person or by any other person, shall be
9 considered to have made a disbursement
10 for an electioneering communication.
11 "(ii) RULES FOR DEEMING TRANS-
12 FERS MADE FOR PURPOSE OF MAKING
13 COMMUNICATIONS.—For purposes of
14 clause (i), in determining whether a cov-
15 ered organization or any other person who
16 transfers amounts to another person shall
17 be deemed to have transferred the amounts
18 for the purpose of making an election-
19 eering communication, the following rules
20 apply:
21 "(I) The person shall be deemed
22 to have transferred the amounts for
23 the purpose of making an election-
24 eering communication if—

1 "(aa) the person designates,
2 requests, or suggests that the
3 amounts be used for election-
4 eering communications and the
5 person to whom the amounts
6 were transferred agrees to do so
7 or does so;
8 "(bb) the person making the
9 electioneering communication or
10 another person acting on that
11 person's behalf expressly solicited
12 the person for a donation or pay-
13 ment for making or paying for
14 any electioneering communica-
15 tions;
16 "(cc) the person and the
17 person to whom the amounts
18 were transferred engaged in sub-
19 stantial written or oral discussion
20 regarding the person either mak-
21 ing, or donating or paying for,
22 any electioneering communica-
23 tions;
24 "(dd) the person or the per-
25 son to whom the amounts were

1 transferred knew or had reason
2 to know of the covered organiza-
3 tion's intent to make election-
4 eering communications; or
5 "(ee) the person or the per-
6 son to whom the amounts were
7 transferred made an election-
8 eering communication during the
9 2-year period which ends on the
10 date on which the amounts were
11 transferred.
12 "(II) The person shall not be
13 considered to have transferred the
14 amounts for the purpose of making an
15 electioneering communication if the
16 transfer was a commercial transaction
17 occurring in the ordinary course of
18 business between the person and the
19 person to whom the amounts were
20 transferred, unless there is affirmative
21 evidence that the amounts were trans-
22 ferred for the purpose of making an
23 electioneering communication.
24 "(C) EXCLUSION OF AMOUNTS DES-
25 IGNATED FOR OTHER CAMPAIGN-RELATED AC-

1 TIVITY.—For purposes of subparagraph (A)(i),
2 in determining the amount of a donation or
3 payment made by a person which was provided
4 for the purpose of being used for campaign-re-
5 lated activity or in response to a solicitation for
6 funds to be used for campaign-related activity,
7 there shall be excluded any amount which was
8 designated by the person to be used—
9 "(i) for campaign-related activity de-
10 scribed in clause (ii) of section
11 325(d)(2)(A) (relating to electioneering
12 communications) with respect to a dif-
13 ferent election, or with respect to a can-
14 didate in a different election, than an elec-
15 tion which is the subject of any of the elec-
16 tioneering communications covered by the
17 statement involved; or
18 "(ii) for any campaign-related activity
19 described in clause (i) of section
20 325(d)(2)(A) (relating to independent ex-
21 penditures consisting of a public commu-
22 nication).
23 "(D) COVERED ORGANIZATION REPORTING
24 PERIOD DESCRIBED.—In this paragraph, the
25 'covered organization reporting period' is, with

1 respect to a statement filed by a covered orga-
2 nization under this subsection—
3 "(i) in the case of the first statement
4 filed by a covered organization under this
5 subsection which includes information re-
6 quired under this paragraph, the shorter
7 of—
8 "(I) the period which begins on
9 the effective date of the Democracy is
10 Strengthened by Casting Light on
11 Spending in Elections Act and ends
12 on the disclosure date for the state-
13 ment, or
14 "(II) the 12-month period ending
15 on the disclosure date for the state-
16 ment; and
17 "(ii) in the case of any subsequent
18 statement filed by a covered organization
19 under this subsection which includes infor-
20 mation required under this paragraph, the
21 period occurring since the most recent
22 statement filed by the organization which
23 includes such information.

1 "(E) COVERED ORGANIZATION DE-
2 FINED.—In this paragraph, the term 'covered
3 organization' means any of the following:
4 "(i) Any corporation which is subject
5 to section 316(a).
6 "(ii) Any labor organization (as de-
7 fined in section 316).
8 "(iii) Any organization described in
9 paragraph (4), (5), or (6) of section 501(c)
10 of the Internal Revenue Code of 1986 and
11 exempt from tax under section 501(a) of
12 such Code.
13 "(iv) Any political organization under
14 section 527 of the Internal Revenue Code
15 of 1986, other than a political committee
16 under this Act.
17 "(F) OTHER DEFINITIONS.—In this para-
18 graph, the terms 'campaign-related activity' and
19 'unrestricted donor payment' have the meaning
20 given such terms in section 325.".
21 (2) CONFORMING AMENDMENT.—Section
22 304(2) of such Act (2 U.S.C. 434(f)(2)) is amended
23 by striking "If the disbursements" each place it ap-
24 pears in subparagraph (E) and (F) and inserting the
25 following: "Except in the case of a statement which

1 is required to include additional information under
2 paragraph (6), if the disbursements".

3 **SEC. 212. RULES REGARDING USE OF GENERAL TREASURY**
4 **FUNDS BY COVERED ORGANIZATIONS FOR**
5 **CAMPAIGN-RELATED ACTIVITY.**

6 Title III of the Federal Election Campaign Act of
7 1971 (2 U.S.C. 431 et seq.) is amended by adding at the
8 end the following new section:

9 **"SEC. 325. SPECIAL RULES FOR USE OF GENERAL TREAS-**
10 **URY FUNDS BY COVERED ORGANIZATIONS**
11 **FOR CAMPAIGN-RELATED ACTIVITY.**

12 "(a) USE OF FUNDS FOR CAMPAIGN-RELATED AC-
13 TIVITY.—

14 "(1) IN GENERAL.—Subject to any applicable
15 restrictions and prohibitions under this Act, a cov-
16 ered organization may make disbursements for cam-
17 paign-related activity using—

18 "(A) amounts paid or donated to the orga-
19 nization which are designated by the person
20 providing the amounts to be used for campaign-
21 related activity;

22 "(B) unrestricted donor payments made to
23 the organization; and

24 "(C) other funds of the organization, in-
25 cluding amounts received pursuant to commer-

1 cial activities in the regular course of a covered
2 organization's business.
3 "(2) NO EFFECT ON USE OF SEPARATE SEG-
4 REGATED FUND.—Nothing in this section shall be
5 construed to affect the authority of a covered organi-
6 zation to make disbursements from a separate seg-
7 regated fund established and administered by the or-
8 ganization under section 316(b)(2)(C).
9 "(b) MUTUALLY AGREED RESTRICTIONS ON USE OF
10 FUNDS FOR CAMPAIGN-RELATED ACTIVITY.—
11 "(1) AGREEMENT AND CERTIFICATION.—If a
12 covered organization and a person mutually agree,
13 at the time the person makes a donation, payment,
14 or transfer to the organization which would require
15 the organization to disclose the person's identifica-
16 tion under section 304(g)(5)(A)(ii) or section
17 304(f)(6)(A)(ii), that the organization will not use
18 the donation, payment, or transfer for campaign-re-
19 lated activity, then not later than 30 days after the
20 organization receives the donation, payment, or
21 transfer the organization shall transmit to the per-
22 son a written certification by the chief financial offi-
23 cer of the covered organization (or, if the organiza-
24 tion does not have a chief financial officer, the high-

1 est ranking financial official of the organization)
2 that—
3 "(A) the organization will not use the do-
4 nation, payment, or transfer for campaign-re-
5 lated activity; and
6 "(B) the organization will not include any
7 information on the person in any report filed by
8 the organization under section 304 with respect
9 to independent expenditures or electioneering
10 communications, so that the person will not be
11 required to appear in a significant funder state-
12 ment or a Top 5 Funders list under section
13 318(e).
14 "(2) EXCEPTION FOR PAYMENTS MADE PURSU-
15 ANT TO COMMERCIAL ACTIVITIES.—Paragraph (1)
16 does not apply with respect to any payment or trans-
17 fer made pursuant to commercial activities in the
18 regular course of a covered organization's business.
19 "(c) CERTIFICATIONS REGARDING DISBURSEMENTS
20 FOR CAMPAIGN-RELATED ACTIVITY.—
21 "(1) CERTIFICATION BY CHIEF EXECUTIVE OF-
22 FICER.—If, at any time during a calendar quarter,
23 a covered organization makes a disbursement of
24 funds for campaign-related activity using funds de-
25 scribed in subsection (a)(1), the chief executive offi-

1 cer of the covered organization or the chief executive
2 officer's designee (or, if the organization does not
3 have a chief executive officer, the highest ranking of-
4 ficial of the organization or the highest ranking offi-
5 cial's designee) shall file a statement with the Com-
6 mission which contains the following certifications:
7 "(A) None of the campaign-related activity
8 for which the organization disbursed the funds
9 during the quarter was made in cooperation,
10 consultation, or concert with, or at the request
11 or suggestion of, any candidate or any author-
12 ized committee or agent of such candidate, or
13 political committee of a political party or agent
14 of any political party.
15 "(B) The chief executive officer or highest
16 ranking official of the covered organization (as
17 the case may be) has reviewed and approved
18 each statement and report filed by the organi-
19 zation under section 304 with respect to any
20 such disbursement made during the quarter.
21 "(C) Each statement and report filed by
22 the organization under section 304 with respect
23 to any such disbursement made during the
24 quarter is complete and accurate.

1 "(D) All such disbursements made during
2 the quarter are in compliance with this Act.
3 "(E) No portion of the amounts used to
4 make any such disbursements during the quar-
5 ter is attributable to funds received by the orga-
6 nization that were restricted by the person who
7 provided the funds from being used for cam-
8 paign-related activity pursuant to subsection
9 (b).
10 "(2) APPLICATION OF ELECTRONIC FILING
11 RULES.—Section 304(d)(1) shall apply with respect
12 to a statement required under this subsection in the
13 same manner as such section applies with respect to
14 a statement under subsection (c) or (g) of section
15 304.
16 "(3) DEADLINE.—The chief executive officer or
17 highest ranking official of a covered organization (as
18 the case may be) shall file the statement required
19 under this subsection with respect to a calendar
20 quarter not later than 15 days after the end of the
21 quarter.
22 "(d) DEFINITIONS.—For purposes of this section, the
23 following definitions apply:
24 "(1) COVERED ORGANIZATION.—The term 'cov-
25 ered organization' means any of the following:

1 "(A) Any corporation which is subject to
2 section 316(a).
3 "(B) Any labor organization (as defined in
4 section 316).
5 "(C) Any organization described in para-
6 graph (4), (5), or (6) of section 501(c) of the
7 Internal Revenue Code of 1986 and exempt
8 from tax under section 501(a) of such Code.
9 "(D) Any political organization under sec-
10 tion 527 of the Internal Revenue Code of 1986,
11 other than a political committee under this Act.
12 "(2) CAMPAIGN-RELATED ACTIVITY.—
13 "(A) IN GENERAL.—The term 'campaign-
14 related activity' means—
15 "(i) an independent expenditure con-
16 sisting of a public communication (as de-
17 fined in section 301(22)), a transfer of
18 funds to another person (other than the
19 transferor itself) for the purpose of making
20 such an independent expenditure by that
21 person or by any other person, or (in ac-
22 cordance with subparagraph (B)) a trans-
23 fer of funds to another person (other than
24 the transferor itself) which is deemed to
25 have been made for the purpose of making

1 such an independent expenditure by that
2 person or by any other person; or
3 "(ii) an electioneering communication,
4 a transfer of funds to another person
5 (other than the transferor itself) for the
6 purpose of making an electioneering com-
7 munication by that person or by any other
8 person, or (in accordance with subpara-
9 graph (B)) a transfer of funds to another
10 person (other than the transferor
11 itself)which is deemed to have been made
12 for the purpose of making an election-
13 eering communication by that person or by
14 any other person.
15 "(B) RULE FOR DEEMING TRANSFERS
16 MADE FOR PURPOSE OF CAMPAIGN-RELATED
17 ACTIVITY.—For purposes of subparagraph (A),
18 in determining whether a transfer of funds by
19 one person to another person shall be deemed
20 to have been made for the purpose of making
21 an independent expenditure consisting of a pub-
22 lic communication or an electioneering commu-
23 nication, the following rules apply:
24 "(i) The transfer shall be deemed to
25 have been made for the purpose of making

1 such an independent expenditure or an
2 electioneering communication if—
3 "(I) the person designates, re-
4 quests, or suggests that the amounts
5 be used for such independent expendi-
6 tures or electioneering communica-
7 tions and the person to whom the
8 amounts were transferred agrees to do
9 so or does so;
10 "(II) the person making such
11 independent expenditures or election-
12 eering communications or another
13 person acting on that person's behalf
14 expressly solicited the person for a do-
15 nation or payment for making or pay-
16 ing for any such independent expendi-
17 ture or electioneering communication;
18 "(III) the person and the person
19 to whom the amounts were trans-
20 ferred engaged in substantial written
21 or oral discussion regarding the per-
22 son either making, or donating or
23 paying for, such independent expendi-
24 tures or electioneering communica-
25 tions;

1 "(IV) the person or the person to
2 whom the amounts were transferred
3 knew or had reason to know of the
4 covered organization's intent to dis-
5 burse funds for such independent ex-
6 penditures or electioneering commu-
7 nications; or
8 "(V) the person or the person to
9 whom the amounts were transferred
10 made such an independent expendi-
11 ture or electioneering communication
12 during the 2-year period which ends
13 on the date on which the amounts
14 were transferred.
15 "(ii) The transfer shall not be deemed
16 to have been made for the purpose of mak-
17 ing such an independent expenditure or an
18 electioneering communication if the trans-
19 fer was a commercial transaction occurring
20 in the ordinary course of business between
21 the person and the person to whom the
22 amounts were transferred, unless there is
23 affirmative evidence that the amounts were
24 transferred for the purpose of making such

1 an independent expenditure or election-
2 eering communication.
3 "(3) UNRESTRICTED DONOR PAYMENT.—The
4 term 'unrestricted donor payment' means a payment
5 to a covered organization which consists of a dona-
6 tion or payment from a person other than the cov-
7 ered organization, except that such term does not in-
8 clude—
9 "(A) any payment made pursuant to com-
10 mercial activities in the regular course of a cov-
11 ered organization's business; or
12 "(B) any donation or payment which is
13 designated by the person making the donation
14 or payment to be used for campaign-related ac-
15 tivity or made in response to a solicitation for
16 funds to be used for campaign-related activ-
17 ity.".
18 **SEC. 213. OPTIONAL USE OF SEPARATE ACCOUNT BY COV-**
19 **ERED ORGANIZATIONS FOR CAMPAIGN-RE-**
20 **LATED ACTIVITY.**
21 Title III of the Federal Election Campaign Act of
22 1971 (2 U.S.C. 431 et seq.), as amended by section 212,
23 is further amended by adding at the end the following new
24 section:

1 **"SEC. 326. OPTIONAL USE OF SEPARATE ACCOUNT BY COV-**
2 **ERED ORGANIZATIONS FOR CAMPAIGN-RE-**
3 **LATED ACTIVITY.**
4 "(a) OPTIONAL USE OF SEPARATE ACCOUNT.—
5 "(1) ESTABLISHMENT OF ACCOUNT.—
6 "(A) IN GENERAL.—At its option, a cov-
7 ered organization may make disbursements for
8 campaign-related activity using amounts from a
9 bank account established and controlled by the
10 organization to be known as the Campaign-Re-
11 lated Activity Account (hereafter in this section
12 referred to as the 'Account'), which shall be
13 maintained separately from all other accounts
14 of the organization and which shall consist ex-
15 clusively of the deposits described in paragraph
16 (2).
17 "(B) MANDATORY USE OF ACCOUNT
18 AFTER ESTABLISHMENT.—If a covered organi-
19 zation establishes an Account under this sec-
20 tion, it may not make disbursements for cam-
21 paign-related activity from any source other
22 than amounts from the Account.
23 "(C) EXCLUSIVE USE OF ACCOUNT FOR
24 CAMPAIGN-RELATED ACTIVITY.—Amounts in
25 the Account shall be used exclusively for dis-
26 bursements by the covered organization for

1 campaign-related activity. After such disburse-
2 ments are made, information with respect to de-
3 posits made to the Account shall be disclosed in
4 accordance with section 304(g)(5) or section
5 304(f)(6).
6 "(2) DEPOSITS DESCRIBED.—The deposits de-
7 scribed in this paragraph are deposits of the fol-
8 lowing amounts:
9 "(A) Amounts donated or paid to the cov-
10 ered organization by a person other than the
11 organization for the purpose of being used for
12 campaign-related activity, and for which the
13 person providing the amounts has designated
14 that the amounts be used for campaign-related
15 activity with respect to a specific election or
16 specific candidate.
17 "(B) Amounts donated or paid to the cov-
18 ered organization by a person other than the
19 organization for the purpose of being used for
20 campaign-related activity, and for which the
21 person providing the amounts has not des-
22 ignated that the amounts be used for campaign-
23 related activity with respect to a specific elec-
24 tion or specific candidate.

1 "(C) Amounts donated or paid to the cov-
2 ered organization by a person other than the
3 organization in response to a solicitation for
4 funds to be used for campaign-related activity.
5 "(D) Amounts transferred to the Account
6 by the covered organization from other accounts
7 of the organization, including from the organi-
8 zation's general treasury funds.
9 "(3) NO TREATMENT AS POLITICAL COM-
10 MITTEE.—The establishment and administration of
11 an Account in accordance with this subsection shall
12 not by itself be treated as the establishment or ad-
13 ministration of a political committee for any purpose
14 of this Act.
15 "(b) REDUCTION IN AMOUNTS OTHERWISE AVAIL-
16 ABLE FOR ACCOUNT IN RESPONSE TO DEMAND OF GEN-
17 ERAL DONORS.—
18 "(1) IN GENERAL.—If a covered organization
19 which has established an Account obtains any reve-
20 nues during a year which are attributable to a dona-
21 tion or payment from a person other than the cov-
22 ered organization, and if any person who makes
23 such a donation or payment to the organization noti-
24 fies the organization in writing (at the time of mak-
25 ing the donation or payment) that the organization

1 may not use the donation or payment for campaign-
2 related activity, the organization shall reduce the
3 amount of its revenues available for deposits to the
4 Account which are described in subsection (a)(3)(D)
5 during the year by the amount of the donation or
6 payment.
7 "(2) EXCEPTION.—Paragraph (1) does not
8 apply with respect to any payment made pursuant to
9 commercial activities in the regular course of a cov-
10 ered organization's business.
11 "(c) COVERED ORGANIZATION DEFINED.—In this
12 section, the term 'covered organization' means any of the
13 following:
14 "(1) Any corporation which is subject to section
15 316(a).
16 "(2) Any labor organization (as defined in sec-
17 tion 316).
18 "(3) Any organization described in paragraph
19 (4), (5), or (6) of section 501(c) of the Internal Rev-
20 enue Code of 1986 and exempt from tax under sec-
21 tion 501(a) of such Code.
22 "(4) Any political organization under section
23 527 of the Internal Revenue Code of 1986, other
24 than a political committee under this Act.

1 "(d) CAMPAIGN-RELATED ACTIVITY DEFINED.—In
2 this section, the term 'campaign-related activity' has the
3 meaning given such term in section 325.".

4 **SEC. 214. MODIFICATION OF RULES RELATING TO DIS-**
5 **CLAIMER STATEMENTS REQUIRED FOR CER-**
6 **TAIN COMMUNICATIONS.**

7 (a) APPLYING REQUIREMENTS TO ALL INDE-
8 PENDENT EXPENDITURE COMMUNICATIONS.—Section
9 318(a) of the Federal Election Campaign Act of 1971 (2
10 U.S.C. 441d(a)) is amended by striking "for the purpose
11 of financing communications expressly advocating the
12 election or defeat of a clearly identified candidate" and
13 inserting "for an independent expenditure consisting of a
14 public communication".

15 (b) STAND BY YOUR AD REQUIREMENTS.—

16 (1) MAINTENANCE OF EXISTING REQUIRE-
17 MENTS FOR COMMUNICATIONS BY POLITICAL PAR-
18 TIES AND OTHER POLITICAL COMMITTEES.—Section
19 318(d)(2) of such Act (2 U.S.C. 441d(d)(2)) is
20 amended—

21 (A) in the heading, by striking "OTHERS"
22 and inserting "POLITICAL COMMITTEES";

23 (B) by striking "subsection (a)" and in-
24 serting "subsection (a) which is paid for by a
25 political committee (including a political com-

1 mittee of a political party), other than a polit-
2 ical committee which makes only electioneering
3 communications or independent expenditures
4 consisting of public communications,"; and
5 (C) by striking "or other person" each
6 place it appears.
7 (2) SPECIAL DISCLAIMER REQUIREMENTS FOR
8 CERTAIN COMMUNICATIONS.—Section 318 of such
9 Act (2 U.S.C. 441d) is amended by adding at the
10 end the following new subsection:
11 "(e) COMMUNICATIONS BY OTHERS.—
12 "(1) IN GENERAL.—Any communication de-
13 scribed in paragraph (3) of subsection (a) which is
14 transmitted through radio or television (other than
15 a communication to which subsection (d)(2) applies
16 because the communication is paid for by a political
17 committee, including a political committee of a polit-
18 ical party, other than a political committee which
19 makes only electioneering communications or inde-
20 pendent expenditures consisting of public commu-
21 nications) shall include, in addition to the require-
22 ments of that paragraph, the following:
23 "(A) The individual disclosure statement
24 described in paragraph (2) (if the person pay-
25 ing for the communication is an individual) or

1 the organizational disclosure statement de-
2 scribed in paragraph (3) (if the person paying
3 for the communication is not an individual).
4 "(B) If the communication is an election-
5 eering communication or an independent ex-
6 penditure consisting of a public communication
7 and is paid for in whole or in part with a pay-
8 ment which is treated as a disbursement by a
9 covered organization for campaign-related activ-
10 ity under section 325, the significant funder
11 disclosure statement described in paragraph (4)
12 (if applicable), unless, on the basis of criteria
13 established in regulations promulgated by the
14 Commission, the communication is of such
15 short duration that including the statement in
16 the communication would constitute a hardship
17 to the person paying for the communication by
18 requiring a disproportionate amount of the
19 communication's content to consist of the state-
20 ment.
21 "(C) If the communication is transmitted
22 through television and is an electioneering com-
23 munication or an independent expenditure con-
24 sisting of a public communication and is paid
25 for in whole or in part with a payment which

1 is treated as a disbursement by a covered orga-
2 nization for campaign-related activity under
3 section 325, the Top Five Funders list de-
4 scribed in paragraph (5) (if applicable), unless,
5 on the basis of criteria established in regula-
6 tions promulgated by the Commission, the com-
7 munication is of such short duration that in-
8 cluding the Top Five Funders list in the com-
9 munication would constitute a hardship to the
10 person paying for the communication by requir-
11 ing a disproportionate amount of the commu-
12 nication's content to consist of the Top Five
13 Funders list.
14 "(2) INDIVIDUAL DISCLOSURE STATEMENT DE-
15 SCRIBED.—The individual disclosure statement de-
16 scribed in this paragraph is the following: 'I am
17 _____, and I approve this message.', with
18 the blank filled in with the name of the applicable
19 individual.
20 "(3) ORGANIZATIONAL DISCLOSURE STATE-
21 MENT DESCRIBED.—The organizational disclosure
22 statement described in this paragraph is the fol-
23 lowing: 'I am _____, the _____
24 of _____, and _____ approves
25 this message.', with—

1 "(A) the first blank to be filled in with the
2 name of the applicable individual;
3 "(B) the second blank to be filled in with
4 the title of the applicable individual; and
5 "(C) the third and fourth blank each to be
6 filled in with the name of the organization or
7 other person paying for the communication.
8 "(4) SIGNIFICANT FUNDER DISCLOSURE STATE-
9 MENT DESCRIBED.—
10 "(A) STATEMENT IF SIGNIFICANT FUNDER
11 IS AN INDIVIDUAL.—If the significant funder of
12 a communication paid for in whole or in part
13 with a payment which is treated as a disburse-
14 ment by a covered organization for campaign-
15 related activity under section 325 is an indi-
16 vidual, the significant funder disclosure state-
17 ment described in this paragraph is the fol-
18 lowing: 'I am _____. I helped to pay
19 for this message, and I approve it.', with the
20 blank filled in with the name of the applicable
21 individual.
22 "(B) STATEMENT IF SIGNIFICANT FUNDER
23 IS NOT AN INDIVIDUAL.—If the significant
24 funder of a communication paid for in whole or
25 in part with a payment which is treated as a

1 disbursement by a covered organization for
2 campaign-related activity under section 325 is
3 not an individual, the significant funder disclo-
4 sure statement described in this paragraph is
5 the following: 'I am _____, the
6 _____ of _____.
7 _____ helped to pay for this mes-
8 sage, and _____ approves it.', with—
9 "(i) the first blank to be filled in with
10 the name of the applicable individual;
11 "(ii) the second blank to be filled in
12 with the title of the applicable individual;
13 and
14 "(iii) the third, fourth, and fifth blank
15 each to be filled in with the name of the
16 significant funder of the communication.
17 "(C) SIGNIFICANT FUNDER DEFINED.—
18 "(i) INDEPENDENT EXPENDITURES.—
19 For purposes of this paragraph, the 'sig-
20 nificant funder' with respect to an inde-
21 pendent expenditure consisting of a public
22 communication paid for in whole or in part
23 with a payment which is treated as a dis-
24 bursement by a covered organization for

1 campaign-related activity under section
2 325 shall be determined as follows:
3 "(I) If any report filed by any or-
4 ganization with respect to the inde-
5 pendent expenditure under section
6 304 includes information on any per-
7 son who made a payment to the orga-
8 nization in an amount equal to or ex-
9 ceeding $100,000 which was des-
10 ignated by the person to be used for
11 campaign-related activity consisting of
12 that specific independent expenditure
13 (as required to be included in the re-
14 port under section 304(g)(5)(A)(i)),
15 the person who is identified among all
16 such reports as making the largest
17 such payment.
18 "(II) If any report filed by any
19 organization with respect to the inde-
20 pendent expenditure under section
21 304 includes information on any per-
22 son who made a payment to the orga-
23 nization in an amount equal to or ex-
24 ceeding $100,000 which was des-
25 ignated by the person to be used for

1 campaign-related activity with respect
2 to the same election or in support of
3 the same candidate (as required to be
4 included in the report under section
5 304(g)(5)(A)(i)) but subclause (I)
6 does not apply, the person who is
7 identified among all such reports as
8 making the largest such payment.
9 "(III) If any report filed by any
10 organization with respect to the inde-
11 pendent expenditure under section
12 304 includes information on any per-
13 son who made a payment to the orga-
14 nization which was provided for the
15 purpose of being used for campaign-
16 related activity or in response to a so-
17 licitation for funds to be used for
18 campaign-related activity (as required
19 to be included in the report under sec-
20 tion 304(g)(5)(A)(i)) but subclause (I)
21 or subclause (II) does not apply, the
22 person who is identified among all
23 such reports as making the largest
24 such payment.

1 "(IV) If none of the reports filed
2 by any organization with respect to
3 the independent expenditure under
4 section 304 includes information on
5 any person (other than the organiza-
6 tion) who made a payment to the or-
7 ganization which was provided for the
8 purpose of being used for campaign-
9 related activity or in response to a so-
10 licitation for funds to be used for
11 campaign-related activity, but any of
12 such reports includes information on
13 any person who made an unrestricted
14 donor payment to the organization (as
15 required to be included in the report
16 under section 304(g)(5)(A)(ii)), the
17 person who is identified among all
18 such reports as making the largest
19 such unrestricted donor payment.
20 "(ii) ELECTIONEERING COMMUNICA-
21 TIONS.—For purposes of this paragraph,
22 the 'significant funder' with respect to an
23 electioneering communication paid for in
24 whole or in part with a payment which is
25 treated as a disbursement by a covered or-

1 ganization for campaign-related activity
2 under section 325, shall be determined as
3 follows:
4 "(I) If any report filed by any or-
5 ganization with respect to the elec-
6 tioneering communication under sec-
7 tion 304 includes information on any
8 person who made a payment to the
9 organization in an amount equal to or
10 exceeding $100,000 which was des-
11 ignated by the person to be used for
12 campaign-related activity consisting of
13 that specific electioneering commu-
14 nication (as required to be included in
15 the report under section
16 304(f)(6)(A)(i)), the person who is
17 identified among all such reports as
18 making the largest such payment.
19 "(II) If any report filed by any
20 organization with respect to the elec-
21 tioneering communication under sec-
22 tion 304 includes information on any
23 person who made a payment to the
24 organization in an amount equal to or
25 exceeding $100,000 which was des-

1 ignated by the person to be used for
2 campaign-related activity with respect
3 to the same election or in support of
4 the same candidate (as required to be
5 included in the report under section
6 304(f)(6)(A)(i)) but subclause (I)
7 does not apply, the person who is
8 identified among all such reports as
9 making the largest such payment.
10 "(III) If any report filed by any
11 organization with respect to the elec-
12 tioneering communication under sec-
13 tion 304 includes information on any
14 person who made a payment to the
15 organization which was provided for
16 the purpose of being used for cam-
17 paign-related activity or in response to
18 a solicitation for funds to be used for
19 campaign-related activity (as required
20 to be included in the report under sec-
21 tion 304(f)(6)(A)(i)) but subclause (I)
22 or subclause (II) does not apply, the
23 person who is identified among all
24 such reports as making the largest
25 such payment.

1 "(IV) If none of the reports filed
2 by any organization with respect to
3 the electioneering communication
4 under section 304 includes informa-
5 tion on any person who made a pay-
6 ment to the organization which was
7 provided for the purpose of being used
8 for campaign-related activity or in re-
9 sponse to a solicitation for funds to be
10 used for campaign-related activity, but
11 any of such reports includes informa-
12 tion on any person who made an unre-
13 stricted donor payment to the organi-
14 zation (as required to be included in
15 the report under section
16 304(f)(6)(A)(ii)), the person who is
17 identified among all such reports as
18 making the largest such unrestricted
19 donor payment.
20 "(5) TOP 5 FUNDERS LIST DESCRIBED.—With
21 respect to a communication paid for in whole or in
22 part with a payment which is treated as a disburse-
23 ment by a covered organization for campaign-related
24 activity under section 325, the Top 5 Funders list
25 described in this paragraph is—

1 "(A) in the case of a disbursement for an
2 independent expenditure consisting of a public
3 communication, a list of the 5 persons who pro-
4 vided the largest payments of any type which
5 are required under section 304(g)(5)(A) to be
6 included in the reports filed by any organization
7 with respect to that independent expenditure
8 under section 304, together with the amount of
9 the payments each such person provided; or
10 "(B) in the case of a disbursement for an
11 electioneering communication, a list of the 5
12 persons who provided the largest payments of
13 any type which are required under section
14 304(f)(6)(A) to be included in the reports filed
15 by any organization with respect to that elec-
16 tioneering communication under section 304,
17 together with the amount of the payments each
18 such person provided.
19 "(6) METHOD OF CONVEYANCE OF STATE-
20 MENT.—
21 "(A) COMMUNICATIONS TRANSMITTED
22 THROUGH RADIO.—In the case of a communica-
23 tion to which this subsection applies which is
24 transmitted through radio, the disclosure state-
25 ments required under paragraph (1) shall be

1 made by audio by the applicable individual in a
2 clearly spoken manner.
3 "(B) COMMUNICATIONS TRANSMITTED
4 THROUGH TELEVISION.—In the case of a com-
5 munication to which this subsection applies
6 which is transmitted through television, the in-
7 formation required under paragraph (1)—
8 "(i) shall appear in writing at the end
9 of the communication in a clearly readable
10 manner, with a reasonable degree of color
11 contrast between the background and the
12 printed statement, for a period of at least
13 6 seconds; and
14 "(ii) except in the case of a Top 5
15 Funders list described in paragraph (5),
16 shall also be conveyed by an unobscured,
17 full-screen view of the applicable indi-
18 vidual, or by the applicable individual mak-
19 ing the statement in voice-over accom-
20 panied by a clearly identifiable photograph
21 or similar image of the individual.
22 "(7) APPLICABLE INDIVIDUAL DEFINED.—In
23 this subsection, the term 'applicable individual'
24 means, with respect to a communication to which
25 this paragraph applies—

1 "(A) if the communication is paid for by
2 an individual or if the significant funder of the
3 communication under paragraph (4) is an indi-
4 vidual, the individual involved;
5 "(B) if the communication is paid for by a
6 corporation or if the significant funder of the
7 communication under paragraph (4) is a cor-
8 poration, the chief executive officer of the cor-
9 poration (or, if the corporation does not have a
10 chief executive officer, the highest ranking offi-
11 cial of the corporation);
12 "(C) if the communication is paid for by a
13 labor organization or if the significant funder of
14 the communication under paragraph (4) is a
15 labor organization, the highest ranking officer
16 of the labor organization; or
17 "(D) if the communication is paid for by
18 any other person or if the significant funder of
19 the communication under paragraph (4) is any
20 other person, the highest ranking official of
21 such person.
22 "(8) COVERED ORGANIZATION DEFINED.—In
23 this subsection, the term 'covered organization'
24 means any of the following:

1 "(A) Any corporation which is subject to
2 section 316(a).
3 "(B) Any labor organization (as defined in
4 section 316).
5 "(C) Any organization described in para-
6 graph (4), (5), or (6) of section 501(c) of the
7 Internal Revenue Code of 1986 and exempt
8 from tax under section 501(a) of such Code.
9 "(D) Any political organization under sec-
10 tion 527 of the Internal Revenue Code of 1986,
11 other than a political committee under this Act.
12 "(9) OTHER DEFINITIONS.—In this subsection,
13 the terms 'campaign-related activity' and 'unre-
14 stricted donor payment' have the meaning given
15 such terms in section 325.".
16 (3) APPLICATION TO CERTAIN MASS MAIL-
17 INGS.—Section 318(a)(3) of such Act (2 U.S.C.
18 441d(a)(3)) is amended to read as follows:
19 "(3) if not authorized by a candidate, an au-
20 thorized political committee of a candidate, or its
21 agents, shall clearly state—
22 "(A) the name and permanent street ad-
23 dress, telephone number, or World Wide Web
24 address of the person who paid for the commu-
25 nication;

1 "(B) if the communication is an inde-
2 pendent expenditure consisting of a mass mail-
3 ing (as defined in section 301(23)) which is
4 paid for in whole or in part with a payment
5 which is treated as a disbursement by a covered
6 organization for campaign-related activity under
7 section 325, the name and permanent street ad-
8 dress, telephone number, or World Wide Web
9 address of—
10 "(I) the significant funder of the com-
11 munication, if any (as determined in ac-
12 cordance with subsection (e)(4)(C)(I)); and
13 "(ii) each person who would be in-
14 cluded in the Top 5 Funders list which
15 would be submitted with respect to the
16 communication if the communication were
17 transmitted through television, if any (as
18 determined in accordance with subsection
19 (e)(5)); and
20 "(C) that the communication is not au-
21 thorized by any candidate or candidate's com-
22 mittee.".

1 **Subtitle B—Reporting Require-**
2 **ments for Registered Lobbyists**

3 **SEC. 221. REQUIRING REGISTERED LOBBYISTS TO REPORT**
4 **INFORMATION ON INDEPENDENT EXPENDI-**
5 **TURES AND ELECTIONEERING COMMUNICA-**
6 **TIONS.**

7 (a) IN GENERAL.—Section 5(d)(1) of the Lobbying
8 Disclosure Act of 1995 (2 U.S.C. 1604(d)(1)) is amend-
9 ed—

10 (1) by striking "and" at the end of subpara-
11 graph (F);

12 (2) by redesignating subparagraph (G) as sub-
13 paragraph (I); and

14 (3) by inserting after subparagraph (F) the fol-
15 lowing new subparagraphs:

16 "(G) the amount of any independent ex-
17 penditure (as defined in section 301(17) of the
18 Federal Election Campaign Act of 1971 (2
19 U.S.C. 431(17)) equal to or greater than
20 $1,000 made by such person or organization,
21 and for each such expenditure the name of each
22 candidate being supported or opposed and the
23 amount spent supporting or opposing each such
24 candidate;

1 "(H) the amount of any electioneering
2 communication (as defined in section 304(f)(3)
3 of such Act (2 U.S.C. 434(f)(3)) equal to or
4 greater than $1,000 made by such person or or-
5 ganization, and for each such communication
6 the name of the candidate referred to in the
7 communication and whether the communication
8 involved was in support of or in opposition to
9 the candidate; and".

10 (b) EFFECTIVE DATE.—The amendments made by
11 this section shall apply with respect to reports for semi-
12 annual periods described in section 5(d)(1) of the Lob-
13 bying Disclosure Act of 1995 that begin after the date
14 of the enactment of this Act.

15 TITLE III—DISCLOSURE BY COV-
16 ERED ORGANIZATIONS OF IN-
17 FORMATION ON CAMPAIGN-
18 RELATED ACTIVITY

19 SEC. 301. REQUIRING DISCLOSURE BY COVERED ORGANI-
20 ZATIONS OF INFORMATION ON CAMPAIGN-
21 RELATED ACTIVITY.

22 Title III of the Federal Election Campaign Act of
23 1971 (2 U.S.C. 431 et seq.), as amended by section 213,
24 is amended by adding at the end the following new section:

1 **"SEC. 327. DISCLOSURES BY COVERED ORGANIZATIONS TO**
2 **SHAREHOLDERS, MEMBERS, AND DONORS OF**
3 **INFORMATION ON DISBURSEMENTS FOR**
4 **CAMPAIGN-RELATED ACTIVITY.**

5 "(a) INCLUDING INFORMATION IN REGULAR PERI-
6 ODIC REPORTS.—

7 "(1) IN GENERAL.—A covered organization
8 which submits regular, periodic reports to its share-
9 holders, members, or donors on its finances or ac-
10 tivities shall include in each such report the informa-
11 tion described in paragraph (2) with respect to the
12 disbursements made by the organization for cam-
13 paign-related activity during the period covered by
14 the report.

15 "(2) INFORMATION DESCRIBED.—The informa-
16 tion described in this paragraph is, for each dis-
17 bursement for campaign-related activity—

18 "(A) the date of the independent expendi-
19 ture or electioneering communication involved;

20 "(B) the amount of the independent ex-
21 penditure or electioneering communication in-
22 volved;

23 "(C) the name of the candidate identified
24 in the independent expenditure or electioneering
25 communication involved, the office sought by
26 the candidate, and (if applicable) whether the

1 independent expenditure or electioneering com-
2 munication involved was in support of or in op-
3 position to the candidate;
4 "(D) in the case of a transfer of funds to
5 another person, the information required by
6 subparagraphs (A) through (C), as well as the
7 name of the recipient of the funds and the date
8 and amount of the funds transferred;
9 "(E) the source of such funds; and
10 "(F) such other information as the Com-
11 mission determines is appropriate to further the
12 purposes of this subsection.
13 "(b) HYPERLINK TO INFORMATION INCLUDED IN
14 REPORTS FILED WITH COMMISSION.—
15 "(1) REQUIRING POSTING OF HYPERLINK.—If a
16 covered organization maintains an Internet site, the
17 organization shall post on such Internet site a
18 hyperlink from its homepage to the location on the
19 Internet site of the Commission which contains the
20 following information:
21 "(A) The information the organization is
22 required to report under section 304(g)(5)(A)
23 with respect to public independent expenditures.
24 "(B) The information the organization is
25 required to include in a statement of disburse-

1 ments for electioneering communications under
2 section 304(f)(6).
3 "(2) DEADLINE; DURATION OF POSTING.—The
4 covered organization shall post the hyperlink de-
5 scribed in paragraph (1) not later than 24 hours
6 after the Commission posts the information de-
7 scribed in such paragraph on the Internet site of the
8 Commission, and shall ensure that the hyperlink re-
9 mains on the Internet site of the covered organiza-
10 tion until the expiration of the 1-year period which
11 begins on the date of the election with respect to
12 which the public independent expenditures or elec-
13 tioneering communications are made.
14 "(c) COVERED ORGANIZATION DEFINED.—In this
15 section, the term 'covered organization' means any of the
16 following:
17 "(1) Any corporation which is subject to section
18 316(a).
19 "(2) Any labor organization (as defined in sec-
20 tion 316).
21 "(3) Any organization described in paragraph
22 (4), (5), or (6) of section 501(c) of the Internal Rev-
23 enue Code of 1986 and exempt from tax under sec-
24 tion 501(a) of such Code.

1 "(4) Any political organization under section
2 527 of the Internal Revenue Code of 1986, other
3 than a political committee under this Act.".

4 TITLE IV—OTHER PROVISIONS

5 **SEC. 401. JUDICIAL REVIEW.**

6 (a) SPECIAL RULES FOR ACTIONS BROUGHT ON
7 CONSTITUTIONAL GROUNDS.—If any action is brought for
8 declaratory or injunctive relief to challenge the constitu-
9 tionality of any provision of this Act or any amendment
10 made by this Act, the following rules shall apply:

11 (1) The action shall be filed in the United
12 States District Court for the District of Columbia,
13 and an appeal from a decision of the District Court
14 may be taken to the Court of Appeals for the Dis-
15 trict of Columbia Circuit.

16 (2) A copy of the complaint shall be delivered
17 promptly to the Clerk of the House of Representa-
18 tives and the Secretary of the Senate.

19 (3) It shall be the duty of the United States
20 District Court for the District of Columbia, the
21 Court of Appeals for the District of Columbia Cir-
22 cuit, and the Supreme Court of the United States to
23 advance on the docket and to expedite to the great-
24 est possible extent the disposition of the action and
25 appeal.

1 (b) INTERVENTION BY MEMBERS OF CONGRESS.—In
2 any action in which the constitutionality of any provision
3 of this Act or any amendment made by this Act is raised,
4 any member of the House of Representatives (including
5 a Delegate or Resident Commissioner to the Congress) or
6 Senate shall have the right to intervene either in support
7 of or opposition to the position of a party to the case re-
8 garding the constitutionality of the provision or amend-
9 ment. To avoid duplication of efforts and reduce the bur-
10 dens placed on the parties to the action, the court in any
11 such action may make such orders as it considers nec-
12 essary, including orders to require intervenors taking simi-
13 lar positions to file joint papers or to be represented by
14 a single attorney at oral argument.

15 (c) CHALLENGE BY MEMBERS OF CONGRESS.—Any
16 Member of the House of Representatives (including a Del-
17 egate or Resident Commissioner to the Congress) or Sen-
18 ate may bring an action, subject to the special rules de-
19 scribed in subsection (a), for declaratory or injunctive re-
20 lief to challenge the constitutionality of any provision of
21 this Act or any amendment made by this Act.

22 **SEC. 402. SEVERABILITY.**

23 If any provision of this Act or amendment made by
24 this Act, or the application of a provision or amendment
25 to any person or circumstance, is held to be unconstitu-

1 tional, the remainder of this Act and amendments made
2 by this Act, and the application of the provisions and
3 amendment to any person or circumstance, shall not be
4 affected by the holding.

5 **SEC. 403. EFFECTIVE DATE.**

6 Except as otherwise provided, this Act and the
7 amendments made by this Act shall take effect upon the
8 expiration of the 30-day period which begins on the date
9 of the enactment of this Act, and shall take effect without
10 regard to whether or not the Federal Election Commission
11 has promulgated regulations to carry out such amend-
12 ments.

The CHAIRMAN. The substitute before you is a result of the hearings this committee has conducted and the valuable bipartisan feedback we have received from these hearings. The substitute contains two improvements that are a direct result of the feedback we have received from the minority witnesses and the Republican members of this committee. First, the substitute contains a hardship exemption to the mandatory radio and TV disclaimers that if communications are of such a short duration and it takes up too much time of the entire communications, you will be able to pursue an exemption to the requirements.

Mr. Lungren and Mr. Harper raised this issue and it was a perfectly legitimate issue. So I included a provision that would direct the Federal Election Commission to authorize regulation to provide for that exemption. You have a 10 second ad and it takes 4 seconds for the disclaimer. They can apply for a hardship exemption 30-second ad. I believe that my friend, and he is my friend, Mr. Lungren, said that they timed a 14, 16-second disclaimer. You now can apply for an exemption and I am sure that we will receive one so that the ad doesn't take up—you get your message across rather than who is on the line of people that are saying it.

Second, the substitute revises a section requiring public dissemination of a covered organizations as public, independent expenditures. This substitute requires covered organizations who have maintain an Internet site to post on the site a hyperlink to the Federal Election Commission site where the disclosure reports are filed. I agree with the minority concerns that requiring a covered organization to develop, operate, and maintain complicated reporting instructions at their own expense may be too complicated and too costly. By allowing them to just link directly to the FEC, this provision will relieve the expense of time and money. This means that a person can just click on a link on an organization Web site and go directly to the FEC where the disclosured information is. This eliminates an organization from assigning someone to constantly update their own Web site and the money that it costs to have that done.

The substitute makes other improvements. It adds a new section of the bill allowing United States citizens employed by United States subsidiaries of foreign countries to form and make voluntary contributions to separate forms or PACs. The employees of a United States subsidiary can now contribute to a PAC so long as that PAC is not controlled or directed by foreign interests.

The substitute also makes other technical amendments that have been made to clarify the purpose of the coordinated communication sections. It does not interfere with the bloggers or the Internet and clarifies the confusion in the original bill. These changes also preserve current FEC regulations on coordination that allows for safe harbors and firewalls. The DISCLOSE Act was not intended to interfere with true grassroots lobbying of Federal officials on legislative issues from being caught up in our campaign laws. If a constituent group asks for our help or advice we should be able to help and advise that group without that group being disqualified from making a contribution so long as that help and advice have nothing to do with our own campaigns. This substitute improves the DIS-

CLOSE Act, and I urge the members to support it. And I ask if there's any debate on this substitution, substitute act.

If not, then I would ask are there any amendments to the substitute.

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Yes. Mr. Lungren.

Mr. LUNGREN. We have a number of amendments on our side of the aisle. So I would like to present the first of my amendments. I think it is amendment No. 1. It should be at the desk.

The CHAIRMAN. Okay. This is amendment No. 1. I recognize the gentleman for 5 minutes.

[The information follows:]

Amendment #1

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

Strike section 2.

☒

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Mr. Chairman, the amendment that I have would strike section 2 of the bill that has the purported findings of this committee with respect to the bill. There are some of the findings that I think refined I can certainly agree with. There are others that I find to be contentious. And by containing some of the findings and not containing others in similarly situated circumstances, I think it goes well beyond the committee's record representing an ideological statement rather than a summary of the facts before the committee.

For instance, the findings related to government contractors state that government contracting is an activity particularly susceptible to improper influence and the appearance of improper influence as opposed to other kinds of conduct. Yet not a single one of the witnesses in either of our hearings gave examples of this being the case. We do not have any records—cases that point to improper behavior in government contracting.

Moreover, if a government official were to exact pressure on a government contractor to make an independent expenditure, as is suggested in the findings, that behavior is already illegal under current criminal statutes. It does not set the predicate for our making changes in the law here. The Court's decision in Citizens United did nothing to change procurement guidelines, the role of the Inspector General's office, the role of the Committee on Standards of Official Conduct or many of the other safeguards Congress has already put in place to prevent corruption. The findings of section 2 of the bill therefore do not really go to the need for a bill nor to anything that was presented to this committee, therefore anything that we absolutely considered.

Rather, it is a selective parade of horribles, suggesting that which could happen under current law and, in fact, these things cannot happen under current law, that is, if the current law is prosecuted.

Secondly, it seems to be somewhat selective in that it refers to those contractors, but it doesn't refer to those who represent public employees in terms of their direct negotiations with the government. And if there is a suggestion of a particular problem of potential corruption in terms of government contracting, that would certainly lie also with respect to those negotiating on behalf of a large number of people for essentially taxpayers' dollars that are far greater than the threshold that is established in this bill.

Regarding the findings on foreign corporations, the bill makes broad statements arguing that Citizens United opened the door for foreign companies to influence American elections through their American subsidiaries. However, foreign nationals have always been prohibited and continue to be prohibited from making decisions affecting American elections through their subcommittees.

Currently, all decisions of the nature, that is, of a political nature, must be made by Americans within the subsidiary and cannot be influenced by the international governing board. I think that is good law. I think that is good policy. That is already good law and good policy. It is already prohibited. That is, that kind of activity in contravention of that policy it is already prohibited under cur-

rent law, a position long held before the Citizens United and was not addressed in any way by before the courts.

So the Citizens United case doesn't change it at all. Many of the findings include factual and legal conclusions that go beyond the committee's record and represent statements rather than a summary of facts before the committee. Now, we might be able to sit down and agree on them, but frankly I would think that a committee ought to at least have a record that supports the purported findings. It is difficult enough now to get the courts to seriously consider findings contained in laws passed by the Congress, but where you have findings that have no support in any record whatsoever, why would anybody question whether courts don't take those into consideration in terms of interpreting the law?

It is telling that the substitute amendment the majority provided us late yesterday afternoon struck portions of the findings and added others that were not previously found in the bill. I can only ask if we were going to hold this markup next week whether we would find other findings added and the current findings extracted. Mr. Chairman, I would just say the findings do not reflect the facts as we know them, certainly not contained in any record of hearings in this committee, and I would hope my colleagues would join me in striking this section of the bill. I thank you, Mr. Chairman.

The CHAIRMAN. I thank the gentleman. Any other additional debate on this amendment?

Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I cannot support the amendment and I think actually the disagreement about the findings that our friend and my colleague from California has outlined really reflect or underlying disagreements about the bill itself and I do think that having findings and I commend the chairman for tightening them up in the manager's amendment. I thought that was helpful.

Having findings is helpful to the Court. The finding lays out the history of campaign finance laws, why the proponents of the bill believe it is necessary, why Congress has a compelling interests to act and I think that if the courts see this, that will be helpful to them in understanding the intent and the rationale for the bill itself, understanding that there is a disagreement about the underlying bill. And I know we have many amendments; so I will not go on at great length, but I did want to respectfully disagree. And I yield back.

The CHAIRMAN. I thank the lady. Any other debate? Hearing none—Mrs. Davis.

Mrs. DAVIS of California. Mr. Chairman, I think Ms. Lofgren really laid a little bit of that out. I mean, this really is just hiding the reason that we are moving forward with this bill, and I think that is what is problematic. I rather appreciate my colleagues saying—they certainly agree—I am certain they would agree with something like the American people have a compelling interest in knowing who is funding independent expenditures and electioneering communications to influence Federal elections. I would hope that there is no disagreement with that. There are a number of other statements here that really highlight the disclosure and the disclaimer requirements that have been affirmed again and again by the Court.

That is really the reason for laying out these kind of basic commonsense ideas that are part of this. So I think we could probably wordsmith some of this, and I think that the manager's amendments begin to deal with that, but in this kind of legislation, I think you really do have to lay out why are we doing this, and that is what is clear in the bill. Thank you.

The CHAIRMAN. I thank the lady. Any additional debate on the amendment to the substitute?

If not, the question is on the amendment.

All those in favor signify by saying aye. All those opposed no? No.

In the opinion of the Chair, the noes have it. The noes have it and the amendment is not agreed to. The next amendment. Any further amendments?

Mr. LUNGREN. Mr. Chairman, I have an amendment I think it is labeled amendment No. 2.

[The information follows:]

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 101, insert after subsection (b) the following (and redesignate the succeeding subsection accordingly):

1 (c) APPLICATION TO LABOR ORGANIZATIONS.—Sec-
2 tion 317 of such Act (2 U.S.C. 441c), as amended by sub-
3 section (a)(2), is further amended—
4 (1) by redesignating subsections (c) and (d) as
5 subsections (d) and (e); and
6 (2) by inserting after subsection (b) the fol-
7 lowing new subsection:
8 "(c)(1) During the period described in paragraph (2),
9 subsection (a) shall apply with respect to a labor organiza-
10 tion which enters into a collective bargaining agreement
11 with the United States or any department or agency there-
12 of in the same manner as such subsection applies to a
13 person who enters into a contract described in such sub-
14 section with the United States or any department or agen-
15 cy thereof.
16 "(2) The period described in this paragraph is, with
17 respect to a collective bargaining agreement—

1 "(A) the period beginning with the commence-
2 ment of negotiations for the agreement; and
3 "(B) ending with the later of the completion of
4 performance under the agreement or the termination
5 of negotiations for the agreement.
6 "(3) Nothing in this subsection shall be construed to
7 affect any individual who receives a payment from the
8 United States or any department or agency thereof pursu-
9 ant to a collective bargaining agreement entered into be-
10 tween a labor organization and the United States or any
11 department or agency thereof.".

The CHAIRMAN. I recognize the gentleman for 5 minutes.

Mr. LUNGREN. Thank you very much, Mr. Chairman.

Yesterday we received a letter from eight former FEC commissioners pointing out that one of the most glaring problems with the so-called DISCLOSE Act is that it, quote, "abandons the longstanding policy of treating unions and businesses are equally."

Now, I know we have heard rhetoric in this committee that that is not the case with respect to the bill, but in fact, it is, and I would hope that those on the other side of the aisle who have said we believe that our effort here is to make sure that everyone is treated equally—that has been the comment made by the authors of this bill in public testimony or at least public statements, that is, the press conference that they have had.

And while the Supreme Court's opinion in Citizens United overturned bans against both corporations and unions, and that is very clear, this legislation seeks to regulate one while largely ignoring the other. Given that unions are some of the largest political donors to the political system, particularly on one side of the aisle, this admission in the bill suggests a partisan motivation for the legislation and it undermines the level playing field our campaign finance laws generally try to ensure. That is, if you read the letter from the former FEC commissioners, they outline the history of the laws dealing with campaign finance and they outline the fact that historically initially the laws with restriction were aimed at corporations at a time in our Nation's history when unions did not have that strong a position.

When unions did develop in such a way that they were an active player in the economic field, the laws then caught up with that and basically treated in this area of the law both unions and corporations in the same way. That has been continued with both legislation passed by the Congress and with the regulatory schemes that have been established by the FEC since its existence. And so when you have a decision by the Supreme Court, which, because it is determined constitutional law and the application of current law, also continues the equal treatment of unions and corporations, it seems to me incumbent upon us to do the very same thing as we try to respond to that decision.

This amendment would provide that the prohibition on expenditures by government contractors would apply equally to labor unions who have collective bargaining agreements with the government. Government employee unions have the same motive and opportunity for corruption that corporations do under the bill, and I hope the members of the committee will adopt the amendment. And why would I bring up the question of corruption? It is because the Supreme Court has made it very clear that the only way that we can have constitutionally valid restrictions on political free speech is when the principle of the potential of corruption or actual corruption involves itself, and so in the bill we have before us we are saying that those who are corporations that have contracts with the Federal Government to the extent of—I believe in your substitute you have kept the bar at—threshold at $50,000—that that is permissible because of the potential of corruption, that very section may very well be rendered unconstitutional by the Court because we, in fact, closed our eyes to the very same argument

with respect to labor unions dealing with at least that amount of taxpayer dollars.

In other words, the Court would look at our legislation as not being based on a constitutional foundation but rather for us deciding that there are favored and disfavored organizations. The Court spoke to that in its opinion. And all I am saying is if we believe truly with the findings and then with the provisions of the bill that government contractors as entities are particularly—or their activity with the government in the political environment is particularly susceptible to corruption, similarly that argument can be made with respect to unions representing members collectively who look to receive tens of thousands if not millions of dollars in taxpayer funds as a result of negotiations.

So, Mr. Chairman, this is done for two reasons. One is I think it is the right thing to do, and secondly, if you are going to avoid having this section of the law being declared unconstitutional on its face, not as applied but on its face, I think you have to do this because the rationale then is an arguable one before the Court. We have said that in both situations where you have a direct relationship—a contractual relationship on the one hand and a negotiating relationship which ends up in essentially a collective bargaining agreement or contract, you have the potential for corruption and therefore you overcome the otherwise existing prohibition against having any restrictions on the exercise of free speech.

So thank you, Mr. Chairman, for the time.

The CHAIRMAN. You are welcome.

Any additional debate on the amendments?

Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I don't agree with the amendment. I want to just explain why. Although there has been a lot of rhetoric on the subject the legislation actually does apply to both corporations and labor unions even though, I would add, the Citizens United never discussed labor unions because the case before them was corporations, but the extrapolation would be that they would include labor unions.

And I think they would. I mean, the rationale was the same and that is why labor unions are included in the bill. But to say that a bill that covers labor unions if they are Federal contractors should change the definition of what a Federal contractor is, I think, is just a mistake and wrong. Under existing law Federal contractors defined to include any person who enters into a contract with the United States, and that would be corporations and labor organizations.

So if you have a labor organization that is under contract to do a task, they would be covered. But I don't think it is a fair analogy between labor unions and contractors in the context of the amendment. The amendment—the section was enacted to deter government contractors from rewarding or punishing Federal candidates with the power to influence or reward those contracts. But in the case of a labor union, no Federal official can reward a union with a collective bargaining agreement. A union can only be formed after a majority of the employees vote to adopt one, and the process of negotiating a collective bargaining agreement involves a long

give-and-take and ultimately a vote by the members to accept a contract.

The unions use voluntary dues paid by the employees they represent to represent them, and by contrast the government contractors might use taxpayer dollars to elect those who would reward them with more contracts.

So I think this amendment would actually extend more burdens on labor unions and corporations. I don't think that is fair. I don't think it is needed. I don't think it is just. And I don't support it. And I would yield back.

The CHAIRMAN. I thank the lady. Is there any additional debate?

Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman. Maybe I have to ask Ms. Lofgren a question here. First, let me go to Mr. Lungren because from the standpoint this bill deals with government contractors, the fear that something can be contrived because they have got a contract with the government. What Mr. Lungren's bill is saying is treat the labor unions who have collective bargaining agreements with the government the exact same way. So it is fairness. Now, if Ms. Lungren is saying that——

Mr. LUNGREN. Ms. Lofgren.

Mr. MCCARTHY. If Ms. Lofgren is saying that——

Ms. LOFGREN. That is why they put our names——

The CHAIRMAN. I get them confused.

Mr. MCCARTHY. Both from California.

But if you are saying a union that gets their raises and gets their money from the taxpayer can't do the same thing that a government contractor does, I am very confused by that because what Mr. Lungren is saying, they both have contracts. They are both getting their money from the same place. So let's just make a level playing field and a fairness question. I was concerned—and if you would take a question—your statement that a contractor would do something wrong to get the contract, but a union cannot do that or influence in any way that somebody else couldn't do some type of influence.

Ms. LOFGREN. If the gentleman would yield, I made several points. One was how unions adopt their contracts and negotiate their contracts, but the further point I made is that the——

Mr. MCCARTHY. Could I ask you one question on that because——

Ms. LOFGREN. Certainly.

Mr. MCCARTHY. If they negotiate their contract, whom do they negotiate their contract with? Would these be elected officials in any way?

Ms. LOFGREN. No.

Mr. MCCARTHY. Never elected officials?

Ms. LOFGREN. Not in my experience but——

The CHAIRMAN. They negotiate with a contract association. They don't negotiate a contract with any elected officials.

Mr. LUNGREN. Would the gentleman yield?

Mr. MCCARTHY. I yield to Mr. Lungren.

Mr. LUNGREN. I am glad to hear this because evidently now unions can stop making contributions because it won't matter who is elected and elected officials have no influence whatsoever on

their appointees or in Congress we have no effect on laws that govern union conduct or negotiations or the universe of money that is available. I mean, I never said that corporations and unions are the same thing. What I said is they are similarly situated with respect to the argument of corruption and the argument of corruption is the only basis upon which the Supreme Court tells us you can put restrictions on political speech.

That is the core of my argument. Not that a corporation is the same as a union. I am saying they are similarly situated with respect to the question of potential corruption. And I find it difficult to believe that anybody could seriously argue against that.

I thank the gentleman for yielding.

Mr. MCCARTHY. I reclaim, but I yield to Ms. Lungren—Ms. Lofgren.

Ms. LOFGREN. We get along, but not that well.

Mr. LUNGREN. My wife is at home.

The CHAIRMAN. We have got enough problems. You are starting more of them.

Ms. LOFGREN. Assuming that the gentleman is yielding to me, I would just note that unions use voluntary dues paid by their employees to represent them and also to elect people who they agree with. In contrast, the government contractor would be using taxpayer dollars to elect those who reward them with more contracts. I think it is quite a distinction and I would just add that if you take a look at what the agenda is of labor unions, it is really a mistake to assume that it is just about the conditions of employment. That is a collective bargaining right, but labor unions are responsible in large measure for supporting the existence of weekends in America, the establishment of a minimum wage, overtime laws and the like.

Mr. MCCARTHY. Ms. Lofgren, if I could reclaim my time, many times elected officials determine whether that work is even going to be union based. So there is a direct correlation between this and I just believe if we are going to move forward, especially with the history of this bill, if you read the press with how it is being developed how, it is being pushed, the quotes from the DCCC chairman of how this has to be done before the election, I just think the American public would feel much greater comfort if it had blinders on, that it treated everybody equally that had any influence whatsoever.

So from one standpoint, taking politics out of it would probably be the healthiest thing we do inside this body, and the idea that people are being treated fairly and equally, I think, has a much stronger argument than any potential out there, and I support the amendment.

The CHAIRMAN. I thank the gentleman. Any additional debate on the amendment to this substitute?

Mr. Davis.

Mr. DAVIS of Alabama. I will be extremely brief, Mr. Chairman. The problem with the amendment, Mr. Lungren, that you and Mr. McCarthy are making, you are kind of mixing apples and oranges. You are saying that the government's interest is preventing any entity that somehow has a policy ambit with the Federal Government, that the Federal Government is making decisions on which

they have a policy interest, that that somehow creates a corrupting influence.

I don't think that is what the Supreme Court said in Citizens United. If the Court had said that, well, my goodness, any group that has legislation before the Congress could be prohibited from making contributions. What this particular section of the bill attempts to do is fill the very narrow question of contracting, and no one has really answered Ms. Lofgren's argument that the way that a corporate contract forms with the government is fundamentally different from the way a union contract forms. If a union contract forms through the collective bargaining process, as opposed through the government tapping someone on the shoulder and saying you get a contract, they are not similarly situated.

The argument that is being advanced by our friends on the minority side would essentially say that if anybody has a policy interest that there is a conflict of interest. Surely the Court didn't mean to say that.

Mr. MCCARTHY. Would the gentleman yield for a question?

Mr. DAVIS of Alabama. Sure.

Mr. MCCARTHY. Taking that argument about that undue influence, take a step back before that contract is given. Could a union have undue influence upon an elected official to make that contract a union-based contract and can only go to a union-based contractor? Could you see——

Mr. DAVIS of Alabama. Reclaiming my time, Citizens United, I think, makes a very, very narrow point about corruption. It doesn't make the point that any potential political decision could be corrupt because special interests could influence it. If that were the case, you could say that doctors couldn't give contributions because we just had a health care bill or that doctors couldn't give contributions because Congress could deal with medical malpractice liability.

What I think the Court is doing is making a very, very narrow focus on what kinds of activity tend to routinely and regularly trigger corruption. And I think the Congress can certainly make a judgment that the process of forming a contract is something that is fundamentally and qualitatively different than Congress simply casting a vote. So I am making a fairly narrow point—I am backing up Ms. Lofgren's argument that all the Congress is doing, all this committee is doing, is singling out contracting, which is a much narrower thing than Congress just expressing a policy interest.

The argument that both of you were making on the minority said is that, well, Congress could do something that was pro-union as well as pro-corporate therefore it could be unduly influenced, that is a much wider sweep than I think Citizens United permits but I will yield to you to address that.

Mr. MCCARTHY. Just to that narrow point, I mean, our point is the same point. If the Court only went after contractors, how could those contractors influence—how else could they be influenced? If I happened to be a contractor and I was union based only or maybe I was in a union shop, if an elected official determined that that job was only one way or the other, it narrowed out the ability for other people to bid on it. So I understand your point where the Court went narrowly, but if you are going narrowly, all we are ask-

ing for is those unions involved in that predicament. So from the standpoint that you did with contracts——

Mr. DAVIS of Alabama. Let me reclaim my time, just to finish these points because we have a lot of amendments. Ms. Lofgren is a making a very particular point. How a company comes to have a government union is a largely discretionary measure. It is based on some element of the political process making a decision. Someone could conceivably believe that the Chair of an Appropriations Committee, that someone else who was a political player in Congress could influence that decision. How and whether a particular union forms is not going to be based on whether any politician makes a discretionary judgment.

It will be based—unless I completely misunderstand the process it will be based on what the members of that union want to do or what the potential members of that union want to do. So there is a factual difference in how a union contract forms in how a corporate contract forms.

Am I right; Ms. Lofgren? So, because of that, Congress is entitled to treat apples and oranges differently. There is nothing in Citizens United that addresses the broad concern that Mr. Lungren put on the table that while Congress has a policy interest that may side with unions, therefore Congress being improperly influenced. If that is the standard, then my goodness, I mean, Congress could conceivably tell any group of American citizens you can't contribute.

I yield back my time, Mr. Chairman.

The CHAIRMAN. I thank the gentleman.

Mr. HARPER. Mr. Chairman.

The CHAIRMAN. Mr. Harper.

Mr. HARPER. I yield my time to Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, let me ask my friend from Alabama this question then. Would he see a distinction between the amendment I have offered and an amendment which would have a similar equal treatment to labor unions of government contractors?

Mr. DAVIS of Alabama. Well, I don't see a distinction because—and I think this may be where we just have a difference of opinion, Mr. Lungren. I think our capacity under a Supreme Court president to regulate speech happens to continue to be still be very narrow. There is no question that Congress could not pass a provision saying, for example, that doctors couldn't contribute because Congress deals with issues in which they have an interest. Congress can exercise its power to regulate speech only in very specific circumstances that are more likely than not to lead to potential corruption——

Mr. LUNGREN. Exactly my point.

Mr. DAVIS of Alabama [continuing]. And I think what Congress is saying is the contracting process for corporations happens to factually meet that standard.

Mr. LUNGREN. Let me ask you this: If you are, in fact, a union which represents the vast majority of employees of a government contractor, don't you have a similar interest as your corporate entity does in securing a contract from the government? What is the difference? The only way you are going to get employed and you

are going to get paid is if your company successfully completes that contracting negotiation with the Federal Government and you have the very same interests in ensuring that is done, that same interest that we are arguing here under lies the potential for corruption. I would be happy to yield——

Mr. DAVIS of Alabama. To follow the old lawyers rule, keep saying the same thing over and over, if you are right the first time—

Mr. LUNGREN. No, I have articulated the difference between what the amendment I have is, which is represented, unions which are representing public employees versus the unions that would be representing employees of government contractors.

Mr. DAVIS of Alabama. I will repeat the point that I have been making. The difference is I think, unless I completely misunderstand the case law here, Congress has limited sets of powers to regulate speech. The only times we can are when there is a finding in effect that one set of relationship has a greater propensity for corrupting influence than another, and I think this body and this committee can make the judgment that the process of how a corporation gains their contract is different substantively from how a union forms. That is a factual difference.

Mr. LUNGREN. I understand, we disagree. You believe there is an essential difference if you happen to be a corporation. We believe that both a corporation and the union, which would benefit from those contracts or benefit from the negotiations under government decisions that would be made by elected officials has the same potential for corruption to the extent that that exists.

We could argue about whether it exists or not, but to the extent it exists, you are arguing that this committee has the right—and we do have the right to make that determination. All I am saying is the net result is that you do not have equal treatment of those two and we could argue and we have been arguing as to whether or not they ought to be treated differently, and the decision here, if my amendment goes down is that they will not be treated the same because I guess the view on your side of the aisle is only the potential for corruption exists; with the corporations it doesn't exist with the unions, and that is a determination you can make, and I just don't happen to agree.

Mr. DAVIS of Alabama. If the gentleman would yield for just 10 seconds are.

Mr. HARPER. I would be happy to yield, Mr. Davis.

Mr. DAVIS of Alabama. I am not saying, and I don't think that Ms. Lofgren is saying is that the difference that we think corporations are inherently more corrupt than unions. I am certainly not saying that. The point that I am making is Congress has to tie its regulatory power to a specific propensity of corruption. It is not based on whether it is a corporation or union; it is based on how the relationship forms. What you just outlined is a broad policy interest, a broad policy interest in unions that Congress may have, but that is not what we can regulate.

Mr. LUNGREN. All I would say is no, based on any record that we have here, you can come to either conclusion. We have no evidence whatsoever in our hearings of any propensity for corruption in—it is a value judgment that we are making that per se that is a more potential corrupting situation than other situations. All I

am saying is if you accept that, I believe you can find the same basis for finding in the situation of the unions as I have articulated, that is all.

We have no record whatsoever in this committee, zero, no testimony whatsoever of evidence of corruption that would justify this, so we are able to make that judgment. All I am saying is you folks have made the judgment that corporations in that situation tend to be—have the greater potential for being corrupt than do unions, and I understand that, I just disagree.

Ms. LOFGREN. Would the gentleman yield?

Mr. HARPER. I would be happy to yield, Ms. Lofgren.

Mr. LUNGREN. I am filing for divorce right now, if you won't support my amendment.

Ms. LOFGREN. I just think it is important to note, and I think it is clear, but it has gotten maybe a little muddled in the course of this discussion. If you have a contract with—with contractor "X" to provide equipment, you are covered. If you have a contract with a labor union to do training under some government program, they are covered as well. If you are a contractor, you are covered no matter whether you are a corporation or a labor union. I think the gentleman's amendment goes one step further, and I, for the reasons I won't reiterate, I disagree with it, but I also think that Mr. Davis' point is also well taken, and it is one that we will mention on some other amendments which is the need to narrowly craft this measure.

The Court actually talked a great deal about, really they dismissed the corruption basis for controlling speech under the FEC in favor of disclosure, which is, you know, I am not sure I completely agree with the decision but that is the decision we are living with because it is the decision they made. So I thank the gentleman for yielding and allowing me to clarify my comments.

Mr. HARPER. Mr. Chairman, I yield back.

The CHAIRMAN. I thank the gentleman. Any additional debate on the amendment to the substitute? If not the question is on the amendment. All those in favor say aye, opposed no. In the opinion of the Chair, the noes have it.

Mr. LUNGREN. I would like to request a roll call vote, please.

The CHAIRMAN. The gentleman requested a roll call vote. I will ask the clerk to call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[no response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. No.

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Harper.

Mr. HARPER. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No.

The noes are five, the yeas are three. The noes have it. The amendment fails. Any further amendments?

[The information follows:]

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-5

SUBJECT: Mr. Lungren – Amendment # 2

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez				53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama		X		52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

Mr. HARPER. Mr. Chairman I have an amendment at the desk. Mr. Chairman, I think this amendment that I have here, amendment No. 3, is something that I think is very simple. It will make us consistent. If there is a potential for conflicts of interest to arise, if government contractors or TARP recipients made political contributions or expenditures, the same potential for conflict is present with organizations that receive government grants. They may want to influence the government officials who provide their grants. They may make political expenditures to do that, just like a government contractor.

Recipients of government grant funds like ACORN should not be able to use government funds to influence future grant awards. This amendment would change the bill to treat government grantees as the bill currently treats similarly-situated government contractors and TARP recipients, and I urge my colleagues to support this amendment, Mr. Chairman.

[The information follows:]

Amendment #3

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 101, insert after subsection (b) the following (and redesignate the succeeding provision accordingly):

1 (c) APPLICATION TO CERTAIN RECIPIENTS OF FED-
2 ERAL FUNDS.—Section 317(a) of such Act (2 U.S.C.
3 441c(a)), as amended by subsection (b), is further amend-
4 ed—
5 (1) by striking "or" at the end of paragraph
6 (2);
7 (2) by redesignating paragraph (3) as para-
8 graph (4); and
9 (3) by inserting after paragraph (2) the fol-
10 lowing new paragraph:
11 "(3) who receives Federal funds (other than an
12 individual who receives Federal funds), during the
13 period which begins on the date on which the person
14 applies to receive such funds and ends on the later
15 of the date on which the person's application for
16 such funds is rejected or the last date on which such
17 funds are paid to the person, directly or indirectly
18 to make any contribution of money or other things

1 of value, to promise expressly or impliedly to make
2 any such contribution to any political party, com-
3 mittee, or candidate for public office or to any per-
4 son for any political purpose or use, or to knowingly
5 solicit any such contribution from any of its employ-
6 ees, to make any independent expenditure, or to dis-
7 burse any funds for an electioneering communica-
8 tion; or".

The CHAIRMAN. I would like to recognize Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. I think that, although I am sure well intentioned, the amendment is flawed and overbroad. In fact, it doesn't—it says who receives Federal funds other than an individual receiving Federal funds? What does that mean? Is that a biotech company that gets an R&D tax credit? I mean, it is very, very broad, this language; as a matter of fact, I think it is overbroad and it is so broad that I think I don't think a court would sustain this as a narrow approach to disclosure. It doesn't even define what Federal funds are. Is it disaster relief? Would it be flood control projects? Would it be rebates to keep American jobs at home? I mean, clearly, this is not directed merely to TARP funds or to grantees and I would point out, although the minority has never been a fan of ACORN, ACORN no longer exists, so that is obviously not going to be someone receiving funds.

So I think that this amendment is really contrary, even to the minority's witnesses at our hearings who argue that the Act we have before us is already overbroad, this makes it even broader. It would sweep organizations into the ban for no apparent reason at all, and I would yield to Mr. Davis.

Mr. DAVIS of Alabama. Let me thank the gentlelady for yielding, because I think she made one of the most important things this committee has to consider, if there is any hope of this legislation being upheld by the U.S. Supreme Court. Congress cannot adopt the policy that there is a potential conflict of interest that because Congress has to vote on something that affects an entity, that that group can't try to influence Congress.

That is such a broad and sweeping proposition, the Court would not uphold it for a second. And while it sounds attractive from a public policy standpoint, or certainly from a political standpoint to say that TARP recipients can't make contributions as a practical matter, the only basis for that would be some kind of generic conflict of interest rationale. And as Ms. Lofgren just pointed out, that is an overly broad interpretation of our capacity and to regulate——

Ms. LOFGREN. Reclaiming my time, I would note also that the Federal funds in the amendment itself are not limited to TARP funds, it is any Federal funds. So obviously, it could be tax credits, it could be anything.

Mr. DAVIS of Alabama. If I could ask the gentlelady one question, one obvious example, we are about to vote on the jobs bill tomorrow. One of the issues in that jobs bill is whether or not carried interest will continue to receive a certain tax treatment. Would anyone logically suggest that Congress could prevent individuals or entities that benefited from the carried interest provision that they couldn't make contributions? We could go on and on, no one would make that argument.

Ms. LOFGREN. Reclaiming my time. This is an amendment that we should not support, although I certainly do not question that the author's motivation is way overbroad. And I think not crafted narrowly, and I yield back.

The CHAIRMAN. Any additional debate on the amendment? Mr. McCarthy.

Mr. MCCARTHY. If I could just ask Mr. Davis, based upon what you said earlier about the very narrow, and then listening to Ms. Lofgren come back and say—and said the TARP the way the bill reads is very broad; is that your interpretation, then, this bill has gone too far? That it would be not upheld by the Supreme Court based upon your earlier comments?

Mr. DAVIS of Alabama. Well, if the gentleman is yielding.

Mr. MCCARTHY. I will gladly yield to you.

Mr. DAVIS of Alabama. Ms. Lofgren, I think, makes the point again exactly right, whether or not the provision singles out TARP recipients, which I don't think it does. I think that is one example of the bill's ambit. If the bill's ambit aims at "recipients of government grants," again, what is the broad basis behind Congress's actions?

If the theory is that people who benefit from government action can't contribute, that is such a broad rationale that it would cover the people arguing about carried interest right now. It would cover the people arguing about the R&D tax credit right now. That could not be a permissible basis for a congressional action. And if there were a specific effort for some reason to single out TARP recipients, logically I don't think that that would pass even a rational basis test because of the lack of difference between TARP recipients and other entities who were affected by government action, there has to be a narrowness to what Congress does, singling out contractors.

Mr. MCCARTHY. You think this bill is narrow enough, I am very concerned reading the bill that maybe where you're arguing, you are making a very good argument that this wouldn't be held up constitutionally.

Mr. DAVIS OF Alabama. Well, I don't want to be the only person talking here, but just to quickly respond, Mr. McCarthy, I want to get out of here too. But just to respond to your point, you are switching between the broad and the narrow. The consistent concern I am advancing is we really don't have a lot of leeway to act. And our leeway to act is based on specific particularized findings that one kind of relationship is likely to have a certain impact that we can attack.

Ms. LOFGREN. Does the gentleman yield.

Mr. MCCARTHY. Gladly.

Ms. LOFGREN. I would note if you take a look at the amendments starting on page—well, the first page line 11 who receives Federal funds, and we talked about what our Federal funds, it could be anything. During the period during which the day it was supposed to supply to receive such ends on the applications dah, dah, dah, dah, it is a prohibition on expenditures, unlike the rest of this bill, which is a disclosure.

The Court directly said, you can't prohibit speech, that is what this whole Citizens United decision was about, and they steered the Congress to disclosure. So, you know, this is way, way beyond what the underlying bill does. In fact, we are not going to do any—I didn't raise a germaneness issue, but its prohibition on expenditures may not actually even be a germane amendment.

Mr. MCCARTHY. If I could reclaim my time.

Ms. LOFGREN. Certainly.

Mr. MCCARTHY. I think the gentleman is saying here though, if you can go after from a narrow point contractors, you are now looking at taxpayer money to grants that have the same type of influence that you made the whole argument for contractors, so it is still in a narrow perspective, and Mr. Davis makes another argument that makes me look at the entire bill that maybe the bill you are going to pass is not going to be upheld within in the Constitution regardless.

So I would argue for the point for the amendment in support of it and I yield back.

The CHAIRMAN. Any additional debate on the amendment to the substitute? If not the question on the amendment all those in favor say aye.

Those opposed, no.

In the opinion of the chair the noes have it, and the noes have it. And the amendment is not agreed to.

Any further amendments?

Mr. LUNGREN. I have amendment number 4.

The CHAIRMAN. Recognize the gentleman.

Mr. LUNGREN. Thank you very much, Mr. Chairman. Interestingly enough I do agree with the gentleman from Alabama about the necessity of us narrowly drawing any restrictions that we have here. And although the gentlelady has said this is all about disclosure, we do, in fact, have prohibitions against participation depending on how much foreign ownership interest there is. So we go beyond disclosure in this law. But let me just say, I, therefore, am concerned with the breadth of the current language in this bill that treats American subsidiaries of foreign companies that employ thousands and even hundreds of thousands of American workers as foreign nationals.

At the same time, I think we ought to be very, very clear that foreign governments and sovereign wealth funds are not able to improperly influence our election. I think we can do that, but not be as broad as the section in the bill that I seek to amend is. This amendment replaces section 102. What it replaces it with is a strict prohibition on any foreign national directing or controlling political activity, thereby I would be codifying current FEC regulations.

One of the points we have made is the concerns expressed in this committee by members and by some on the panel that appeared before us was this undue foreign influence. And we tried to make the point that it is already illegal. And some have made the point well, wait a second, it is articulated specifically by FEC regulations.

So I have taken the FEC regulations and incorporated that as statutory language, and that is the essence of this amendment. It expands the definition of foreign national to include any entity majority owned by a foreign government or foreign political party. The amendment is in direct response to some of the suggestions made by my friend, Mr. Capuano, when we were discussing this as how they would try and deal with this issue.

And the language I use is already settled law as interpreted by the FEC. And I think it goes directly to the point that members were concerned about, but does it a way that is not overly broad, and therefore protects Americans who want to participate in the

political process, and in the way that the associational rights recognized in the Citizens United case provides.

So I would hope that you take a serious look at this amendment. It is a good-faith effort to try and protect against the concerns everyone here has expressed, but at the same time, not be overly broad as our friend from Alabama has suggested. And I couldn't find better language than that which the FEC already has by way of regulation.

This will make it a statutory prohibition in these regards. And with that, I would yield back. Thank you very much, Mr. Chairman.

The CHAIRMAN. You are welcome. Any additional debate on the amendments?

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. Ms. Lofgren.

Ms. LOFGREN. I am—I can't support this amendment, and if you take a look at the language itself, I mean one of the things that we need to do as legislators is to be particular and especially when dealing with the First Amendment to not be vague, because if you are vague and if what you crafted is vague, it is unenforceable and then it will be unconstitutional, and I think that is the problem with the amendment before us.

Section 3 beginning on line 15 is a prohibition of a foreign national, I assume that would include illegal permanent resident of the United States, to directly or indirectly participate in the decision-making process of any person. Well, what does that mean? If you are a legal permanent resident and you indirectly participate in the decision making of a State election-related activity—I just think it is unconstitutionally vague, I don't think anyone would know what we are talking about.

And I do think that the language referenced by my colleague from California on page 2 expanding the definition of it is not a substitution, it is an additional definition is a good-faith effort to try and get at the issues raised by Mr. Capuano at our hearing, but I think it is fatally defeated by the unconstitutionally vague language on the prior page starting at line 15.

So, you know, one of the things we need to make sure we do when we craft this, we know there are going to be challenges to this statute if it becomes law. I think it is important that we craft a bill that can be become law and that can withstand challenges. And I think adoption of this amendment would certainly move us away from that goal. And so I would urge that we do not adopt the amendment.

The CHAIRMAN. Is there any additional debate to that? Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman, I would like to yield my time to Mr. Lungren.

Mr. LUNGREN. I understand the gentlelady's disagreement to us offering amendments here that would change any of the language that has already been presented to us in the last 24 hours, but I find it peculiar to argue that my language is vague when, as I said, I have taken this language directly from the FEC regulations which have, as far as I can tell, withstood any challenge.

Now we are making up language in terms of this bill, what I mean by that is it is language that will be subject to interpretation by the Court. So if there's any suggestion that any uncertainty would prevail, it would be with the language that is before us presented in the substitute amendment. What I have tried to do is bring clarity in it, using language very specifically narrowly drawn by the FEC that deals with this. So I understand if the gentlelady wants to disagree with me, but the argument the gentlelady makes is—it turns my language on its head. I have used language that already exists, that has been through review that applies, and therefore, one would believe that this would give greater guidance to those who would be subjected to it.

And one of the things that I would hope that we would try to do, and we are going to pass a law knowing that the regulations by the FEC are not going to go into effect before this election is at least give people a chance to express their First Amendment rights. I mean, if the idea is to chill any activity, I understand. But if the idea is to narrowly draw to have the protections that we believe are necessary, but at the same time, allow those areas of political participation that are guaranteed under the Constitution, I would think that the gentlelady from California would join us in trying to ensure that people are able to express themselves to the extent allowed under the Constitution, rather than create new language that will be vague in the sense that it will be challenged and we know the FEC wouldn't have time to bring up new regulations.

At least when we pass a bill that uses the language they have in their current regulations we stand a fairly good chance that they might accept that language. So I thank the gentleman for his time and yield back.

Mr. MCCARTHY. Thank you, Mr. Chairman, I yield back my time.

The CHAIRMAN. Is there any additional debate on the amendment to the substitute? Ms. Davis.

Mrs. DAVIS of California. Mr. Chairman, just trying to clarify from Mr. Lungren. As I understand the language refers to indirectly participating and what does that mean, does that come from the FEC language?

Mr. LUNGREN. The short answer is yes. Excuse me, the short answer is yes.

Mrs. DAVIS of California. Where does it say to you, what does it mean to you? That is FEC language you are saying?

Mr. LUNGREN. It is a way that the FEC has tried to get around the possibility that you could give direction to somebody to make the decision when you are not supposed to make the decision. In other words, influencing it "indirectly." What is prohibited you can't do indirectly. Trying to cover those situations where there was a sneak attack.

Mrs. DAVIS of California. And in the manager's amendment, am I right to conclude—that language is not used in the Manager's amendment.

Mr. LUNGREN. No.

Mrs. DAVIS of California. Correct?

Mr. LUNGREN. I don't believe so. No, I used FEC language. FEC regulation language.

The CHAIRMAN. Is there any additional debate on the amendment to the substitute? If not the question on the amendment. All those in favor say aye.

Those opposed, no.

In the opinion of the chair the noes have it, and the noes have it. And the amendment is not agreed to.

Any further amendment?

Mr. LUNGREN. Mr. Chairman, I have amendment number 5.

The CHAIRMAN. The gentleman's recognized.

[The information follows:]

Amendment #5

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 102, insert after subsection (b) the following (and redesignate the succeeding subsection accordingly):

1 (c) CERTIFICATION BY LABOR ORGANIZATION THAT
2 FUNDS USED FOR CAMPAIGN RELATED ACTIVITY ARE
3 NOT DERIVED FROM FOREIGN NATIONALS.—Section 319
4 of such Act (2 U.S.C. 441e), as amended by subsection
5 (b), is further amended by adding at the end the following
6 new subsection:
7 "(d) CERTIFICATION BY LABOR ORGANIZATION
8 THAT FUNDS USED FOR CAMPAIGN RELATED ACTIVITY
9 ARE NOT DERIVED FROM FOREIGN NATIONALS.—
10 "(1) CERTIFICATION.—Prior to the making of
11 any independent expenditure or disbursement of
12 funds for an electioneering communication by a
13 labor organization, the highest ranking official of the
14 organization shall file a certification with the Com-
15 mission, under penalty of perjury, that no individual
16 who paid dues or fees for membership in the organi-
17 zation during the 12-month period ending on the
18 date of the expenditure or disbursement is a foreign

1 national, except that such certification is not re-
2 quired if the expenditure or disbursement is paid en-
3 tirely from a separate segregated fund established
4 and administered by the organization under section
5 316(b)(2)(C).
6 "(2) LABOR ORGANIZATION DEFINED.—In this
7 subsection, the term 'labor organization' has the
8 meaning given such term in section 316(b)(1).".

In section 102(d) (as so redesignated), strike "subsection (b)" and insert "subsections (b) and (c)".

Redesignate subsection (d) of section 319 of the Federal Election Campaign Act of 1971, as proposed to be added by section 102(d) of the bill, as subsection (e).

Mr. LUNGREN. Thank you, Mr. Chairman. Well, we will see how well we do on this one. This is a simple amendment to provide that labor unions must certify that no dues were received from foreign nationals prior to making political expenditures.

In your opening statement, Mr. Chairman, at our May 11th hearing on the legislation, you said we do not let foreign citizens vote in our elections, we should not let them have any financial interest in them either. Well, I think I agree with you, foreign citizens shouldn't have financial interest in our elections, whether they are foreign citizens that have a part of a foreign corporation or foreign citizens that are part of a union with interest in the United States.

This amendment would, again, in my humble opinion, seek to treat corporations and unions even handedly under the bill. It would require that labor unions certify that no dues were received from foreign nationals prior to making political expenditures, the same requirement this legislation places on other organizations. If we believe because of the restrictions we put on foreign nationals in other situations to directly spend on U.S. elections, they shouldn't be able to use either corporations or unions as intermediaries or conduits that is the simple purpose of this amendment.

I think it is drafted to achieve this purpose, I hope you would consider it fair, evenhanded and directly to the point. I would hope I could get members to support this, and with that, I yield back the balance of my time.

The CHAIRMAN. Any additional debate on the amendment?

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. Yes, Ms. Lofgren.

Ms. LOFGREN. I think this is a mistake, and I will tell you why. First, I think that this is a tremendously burdensome requirement on unions and it is a special burden to unions that would not apply to corporations with the same zeal. The manager's amendment applies, I think, rather evenhandedly to both labor unions and corporations as well as trade associations and nonprofit advocacy groups. I think trying to place more stringent rules on only one entity, labor unions, this really isn't very fair. Just think about how this would work. And you have got a labor union, maybe an international union that could have, like, a million members, and maybe a handful of members who are not U.S. citizens. This would prohibit the speech since the Court has said money is speech of that organization unless there was this very burdensome preclearance procedure that I think would not withstand court scrutiny.

I would note also that the—there are some, and we know this because we have discussed outside of this committee, there are, in fact, some individuals who are in the United States without their proper documentation or, in some cases, they are documented, but they are not legal permanent residents. They may be in unions, but I think to burden the vast majority of the union members, and to really prevent the speech, because of that, would not be fair, and I don't think it would——

Mr. LUNGREN. Would the gentlelady yield.

Ms. LOFGREN. Let me finish my thought and then I will certainly yield.

Mr. LUNGREN. Okay.

Ms. LOFGREN. I would like to also say that I believe that legal permanent residents do participate, can contribute under current FEC rules and their U.S.—let's check on that, but I think that is the case. Certainly, nonresident aliens may not and I—this would be changing the law.

Mr. LUNGREN. Could I——

Ms. LOFGREN. Certainly legal residents can participate, they can walk precincts and have opinions and the like. So I think even the—the burden here, I think, is disproportionate. I don't want to go on at too great a length because I know that we have votes, but hopefully, I have made my viewpoint and——

Mr. LUNGREN. Will the gentlelady yield?

Ms. LOFGREN [continuing]. I will yield to the gentleman.

Mr. LUNGREN. I appreciate that. The point I am trying to make is, this is exactly the burden that is placed on the corporate CEO. A corporate CEO is required under the bill before us to certify prior to the time that they would participate in the political speech allowed under Citizens United would have to certify that they do not have a 20 percent ownership by foreign nationals. Think about what that requires the CEO to do. The CEO would have to try and somehow divine who owns every share of stock in the corporation.

And as pointed out in the letter we received from the former FEC commissioners, that could change like that because of the way electronic purchasing and selling of stocks takes place. And it changes every day. And so, the burden that you have indicated would be very difficult for a union is the very same burden that we are placing on a CEO. And the CEO does this under penalty of perjury therefore having criminal sanctions imposed. If it is as burdensome as you suggest, then we are basically telling a CEO it is impossible for you to do this, therefore you can't do it, therefore your corporation cannot participate in political free speech as allowed under Citizens United. All I was trying to do was use the same sort of requirement.

Ms. LOFGREN. If I may reclaim my time. The provisions in corporations applies to individuals, and I don't believe to shareholders. We will get into that at greater length further on in the bill. But I would just like to note that labor unions don't decide who employees are, the employers decide who the employees are, and to put the burden on unions in this way, I think, is unreasonable. I just don't think it is possible.

Mr. MCCARTHY. Would the gentlelady yield for——

Ms. LOFGREN. If I could finish my sentence and then I will be happy to yield.

I think that the bottom line is that this amendment would really prevent every union in America from exercising their First Amendment rights to make contributions or independent expenditures. And in doing that, it would disenfranchise certainly not the handful of noncitizen members, it would disenfranchise all the citizen members. So this would have a very pernicious effect, and I will yield to the gentleman.

Mr. MCCARTHY. Thank you. I listened to your statement that so my question to you is does a corporation get to decide who their shareholders are, in your statement?

Ms. LOFGREN. No, of course not.

Mr. MCCARTHY. So wouldn't that apply to the same logic that you just laid out from a union's point of view?

Ms. LOFGREN. We will get into the foreign ownership discussion, there are other amendments on that later in the bill. I want to talk about this amendment right now. I want to do it quickly because we have to go vote and then come back and finish, but this won't work, this will not work and I can't support it and I yield back.

The CHAIRMAN. Mr. Capuano.

Mr. CAPUANO. I think the gentleman from California made some good points in the last issue and he did, he didn't ask for roll call, which is your problem.

On this one though, it is just the opposite. I think you raise a good point on the 20 percent requirement on corporations, the way to address it is to fix that, not to add excessive burden to an entity that can't do it. I don't know how many donors you have, I don't even know how many I have. I cannot certify that all my donors are U.S. citizens. I can certify they tell me that they live in the United States. And I think that the problem you raise is a valid point, the solution is not. And if you would like to work on another solution, I would be happy to work with you as we move forward, because I don't disagree, a corporation can't know. And I do think the 20 percent level as I said before is questionable, but at the same time there is some line and at some point a corporation should be required at some point in time, maybe not the immediate moment that they spend the money, maybe once a year, again there has to be some reasonable period of time when a corporation can say, at this period of time we are not owned by foreign entities.

Again, we can argue with the definitions, but I am happy to work with you. This particular solution though takes a problem that have I think rightfully identified and instead of solving the problem it simply imposes the problem on another entity. I don't think that is the solution.

Mr. LUNGREN. Would the gentleman yield?

Mr. CAPUANO. Absolutely.

Mr. LUNGREN. The other concern I have in there is this throws you into the area the Court has been very leery about, and that is prior restraint because when you call for a prior certification as we have discussed.

Mr. CAPUANO. I am happy to work with you on it.

Mr. LUNGREN. Okay.

The CHAIRMAN. Any other discussions on the amendment to the substitute? If not, we will hear the question in the amendment. All those in favor say aye.

All those opposed, no. In the opinion of the chair——

Mr. LUNGREN. May I have a roll call vote?

The CHAIRMAN. Will the clerk call the roll.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.
Mr. DAVIS of Alabama. No.
The CLERK. Mr. Lungren.
Mr. LUNGREN. Aye.
The CLERK. Mr. McCarthy.
Mr. MCCARTHY. Aye.
The CLERK. Mr. Harper.
Mr. HARPER. Aye.
The CLERK. Mr. Chairman.

The CHAIRMAN. No. In the opinion of the chair, the noes have it—in the opinion the noes have it, and the amendment is not agreed to. We are now going to recess to go—we have three votes on the floor for those of you who don't know we are not voting tomorrow, but coming here after the last votes and if we can get done some people might get home tonight. We are on recess until the last vote which will probably be about another half hour.

[Recess.]

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-6

SUBJECT: Mr. Lungren – Amendment # 5

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez		X		53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama		X		52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

The CHAIRMAN. I would like to call the meeting on House Administration back to order and ask if there are any further amendments. Ms. Davis.

Mrs. DAVIS of California. Thank you. Thank you, Mr. Chairman. I appreciate your giving me this time at this particular time as well.

We all like win-win ideas and I hope I have one for the committee to consider courtesy of the Sunlight Foundation. This one increases transparency while reducing administrative burdens on the FEC. Under current law, those who sponsor independent expenditures can handwrite the forms and send them as PDF by e-mail or fax them, the matter of the spending amount, and this counts as an electronic filing.

But no matter how they are sent, handwritten forms can be hard to read and take longer for the FEC to make public on its Web site, that can take up to 48 hours for them to be able to do that. This amendment makes sure that expenditures in their communications over $10,000 will be filed electronically and in a way that the FEC can post right away on its Web site.

The DISCLOSE Act makes sure that voters know who is behind the ads they see, and this would make sure that they have that information as soon as possible. With this amendment, organizations will file their forms electronically, using the FEC's Web site form, pre-downloadable filing software or using the FEC-approved commercial software. Actually many of them already do this and they are their complete forms shows up literally in minutes of being filed. This type of transparency won't be difficult to implement within 30 days since it merely expands and adopts a successful existing tool.

I appreciate the fact that my colleagues have taken a look at this and I think that I would certainly like to hear from them, but I think that we have been able to structure something that really does work. We will definitely save money because it is a lot harder, it will be a lot easier than having who are hand transposing information. And the best part, of course, is that it is going to be correct, more likely so because it is filed in a way that comes directly from the forms that be done.

The CHAIRMAN. I thank the lady. Any additional debate on the amendment to the substitute?

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Mr. Lungren.

Mr. LUNGREN. Thank you, Mr. Chairman. This is the kind of reasonable, responsible, effective, simple-to-enforce legislation that I think we should have on a bipartisan basis and I congratulate the gentlelady for doing it. This makes sense, it is not that—it is not an undue burden, it just makes it more transparent and that is what I hope that we could be doing more of is trying to see where we can get greater transparency with ease. It is user friendly and it will help public disclosure and I support it.

The CHAIRMAN. Is there any additional debate to the substitute? If none so ordered if not the question on the amendment, all those in favor signify by saying aye.

Any opposed?

The ayes have it and with that the amendment is agreed to.

Is there any further amendments?

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Lungren.

Mr. LUNGREN. I know the next one is in order Mr. McCarthy, he will be back shortly, so if we could go to number 8, which is my next amendment in order.

The CHAIRMAN. The gentleman is recognized.

[The information follows:]

Amendment #8

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

Strike sections 103 and 104 and insert the following (and conform the table of contents accordingly):

1 **SEC. 103. REPEAL LIMITS ON COORDINATED POLITICAL**
2 **PARTY EXPENDITURES.**
3 (a) REPEAL OF LIMITS.—Section 315(d) of the Fed-
4 eral Election Campaign Act of 1971 (2 U.S.C. 441a(d))
5 is amended—
6 (1) in paragraph (1)—
7 (A) by striking "(1) Notwithstanding" and
8 inserting "Notwithstanding", and
9 (B) by striking "Federal office, subject to
10 the limitations contained in paragraphs (2), (3),
11 and (4) of this subsection" and inserting "Fed-
12 eral office in any amount"; and
13 (2) by striking paragraphs (2), (3), and (4).
14 (b) CONFORMING AMENDMENTS.—
15 (1) INDEXING.—Section 315(c) of such Act (2
16 U.S.C. 441a(c)) is amended—
17 (A) in paragraph (1)(B)(i), by striking
18 "(d),"; and

1 (B) in paragraph (2)(B)(i), by striking
2 "subsections (b) and (d)" and inserting "sub-
3 section (b)".
4 (2) INCREASE IN LIMITS FOR SENATE CAN-
5 DIDATES FACING WEALTHY OPPONENTS.—Section
6 315(i) of such Act (2 U.S.C. 441a(i)(1)) is amend-
7 ed—
8 (A) in paragraph (1)(C)(iii)—
9 (i) by adding "and" at the end of sub-
10 clause (I),
11 (ii) in subclause (II), by striking ";
12 and" and inserting a period, and
13 (iii) by striking subclause (III);
14 (B) in paragraph (2)(A) in the matter pre-
15 ceding clause (i), by striking ", and a party
16 committee shall not make any expenditure,";
17 (C) in paragraph (2)(A)(ii), by striking
18 "and party expenditures previously made"; and
19 (D) in paragraph (2)(B), by striking "and
20 a party shall not make any expenditure".
21 (3) INCREASE IN LIMITS FOR HOUSE CAN-
22 DIDATES FACING WEALTHY OPPONENTS.—Section
23 315A(a) of such Act (2 U.S.C. 441a–1(a)) is amend-
24 ed—
25 (A) in paragraph (1)—

1 (i) by adding "and" at the end of sub-
2 paragraph (A),
3 (ii) in subparagraph (B), by striking
4 "; and" and inserting a period, and
5 (iii) by striking subparagraph (C);
6 (B) in paragraph (3)(A) in the matter pre-
7 ceding clause (i), by striking ", and a party
8 committee shall not make any expenditure,";
9 (C) in paragraph (3)(A)(ii), by striking
10 "and party expenditures previously made"; and
11 (D) in paragraph (3)(B), by striking "and
12 a party shall not make any expenditure".

Mr. LUNGREN. Thank you very much, Mr. Chairman. This goes to the question of what many of us have, I think, reached at least some agreement on, and that is that we would like to have—we would like to have parties and the candidates of the parties closer together more responsible for one another. And what I mean by that is the laws that we have seen over the last number of years appear to have, whether intended or not intended, given a rise to a greater influence by those not connected directly to campaigns or connected to the parties. And I would like to see a closer connection. And one of the ways of doing that is allowing greater coordination.

Members of the both parties on the committee have stated support for allowing parties to spend in coordination with candidates as one way to have a counterweight to the outside spending. The bill's current approach to this problem, in my judgment, is somewhat confusing introducing new language in definitions to an already difficult area of the law. And I really don't understand the need for eight pages of confusing language unless the majority could convince me otherwise. This amendment cleans up the problem with a simple repeal of the existing dollar amount limitation.

It would replace sections 103 and 104 with repeal of limitations on the amount of political parties that their committees may spend in coordination of the candidates. We are not hiding anything, we are saying it is coordinated. The party and the candidate are coordinating. As it is now, there is some very severe restrictions in some cases; frankly, you can't even call the party and tell them, hey, don't do that, it is bad for me, that is, in essence, coordination under the law.

This is a simple straightforward amendment in response to the problem that Democrats and Republicans on the committee recognize as an issue. I would hope that the committee might adopt this amendment, and with that I would yield back the balance of my time.

The CHAIRMAN. Any additional debate on the amendment? I, myself, Mr. Lungren, I do like this concept, I just cannot be supportive of amendment in the bill, but I do want to and will continue to work with you to try to get this done at another time, and another place, in another way. So I——

Mr. LUNGREN. I think I thank you.

The CHAIRMAN. No, you should thank me because I will work with you. I am a party chairman, by the way, in the city of Philadelphia. I understand the burden has shifted so that people can influence an election by putting a whole lot of money into a State party, and then let them come on back and blow the limits that we are about to have. I do appreciate that, and I do thank you, but again, I reluctantly do have to be against this amendment. Is there any additional debate on the amendment? If not the question the amendment, all those in favor say aye.

Any opposed, no.

In the opinion of the chair the noes have it, and the noes have it. And the noes have it and the amendment is not agreed to.

Any additional amendments?

Mr. LUNGREN. Mr. McCarthy is still not here.

The CHAIRMAN. It is okay, tell us what number.

Mr. HARPER. Mr. Chairman, I have an amendment at the desk.
The CHAIRMAN. The gentleman is recognized.
[The information follows:]

Amendment #10

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

Amend section 103(c) to read as follows:

1 (c) TRANSITION RULE FOR ACTIONS TAKEN PRIOR
2 TO EFFECTIVE DATE.—No person shall be considered to
3 have made a payment for a coordinated communication
4 under section 324 of the Federal Election Campaign Act
5 of 1971 (as amended by subsection (b)) by reason of any
6 action taken by the person prior to the effective date of
7 this Act. Nothing in the previous sentence shall be con-
8 strued to affect any determination under any other provi-
9 sion of such Act which is in effect on the effective date
10 of this Act regarding whether a communication is made
11 in cooperation, consultation, or concert with, or at the re-
12 quest or suggestion of, a candidate, an authorized com-
13 mittee of a candidate, or a political committee of a political
14 party.

Strike section 104(c).

Amend section 201(c) to read as follows:

15 (c) EFFECTIVE DATE FOR REPORTING REQUIRE-
16 MENTS.—The amendment made by subsection (b) shall

1 apply with respect to reports required to be filed after the
2 effective date of this Act.

Amend section 202(a)(2) to read as follows:

3 (2) TRANSITION FOR COMMUNICATIONS MADE
4 PRIOR TO EFFECTIVE DATE.—No communication
5 which is made prior to the effective date of this Act
6 shall be treated as an electioneering communication
7 under section 304(f)(3)(A)(i)(II) of the Federal
8 Election Campaign Act of 1971 (as amended by
9 paragraph (1)) unless the communication would be
10 treated as an electioneering communication under
11 such section if the amendment made by paragraph
12 (1) did not apply.

In section 221(b), strike "that begin after the date of the enactment of this Act" and insert "that begin on or after the effective date of this Act".

Amend section 403 to read as follows:

13 **SEC. 403. EFFECTIVE DATE.**

14 Except as otherwise provided, this Act and the
15 amendments made by this Act shall take effect January
16 1, 2011.

Mr. HARPER. Thank you. Mr. Chairman, this is will be amendment number 10. If there is anything that this hearing process has taught us, it is that this bill is far from clear, Mr. Chairman. The authors of the legislation say it does one thing; the experts say it does another; the majority's own witnesses have said it will be up to the FEC to decide what the language means. And yet another of the majority's witnesses say that it would be next to impossible for the FEC to promulgate regulations before the November elections.

And a perfect example of that would be the fact that Citizens United was passed on January 21st of this year and we have yet to hear any word on how those regulations might have been adopted in regard to that. But the bill as written is going to impose civil and criminal penalties on speakers without them having any notice that their behavior may be against the law. What that means is that rather than exercising their first amendment rights, speakers are just going stay silent, this will have a chilling effect.

Making this bill effective in 2011 insures adequate time for instructions and regulations to be developed and court challenges to be heard without the fear that speech will be chilled due to this unclear legal obligations that are set forth. It also ensures that the bill will not be used to manipulate the outcomes of the 2010 elections. And I do urge my colleagues to adopt and support this.

Mr. LUNGREN. Will the gentleman yield for a moment?

Mr. HARPER. I will.

Mr. LUNGREN. We have had a number of elections rather fiercely contested primaries in the last couple months. In fact, this week is very instructive. Is the gentleman aware of any undue influence from corporations or unions utilizing this new freedom that they are have.

Mr. HARPER. Reclaiming my time, I am not aware of an example, things have seem to have worked appropriately.

Mr. CAPUANO. Would the gentleman yield for a question?

Mr. HARPER. You are aware of some issues. I will yield.

Mr. CAPUANO. How would you know?

Mr. HARPER. Well, we have heard no reports.

Mr. CAPUANO. No reports, but nobody is required to disclose anything at this point.

Ms. LOFGREN. Actually, I think there are some records if the gentleman would yield.

Mr. HARPER. I would be glad to yield, Ms. Lofgren.

Ms. LOFGREN. I am not an expert on what is going on in Arkansas, but I understand there have been some sort of a shadowy, negative advertising that is not disclosed and not out of the political parties, but that is secondhand knowledge on my part, and I thank the gentleman for yielding. I think, clearly, if the gentleman would continue to yield then I won't ask for my own time.

Mr. HARPER. If I may, reclaiming my time, if I may finish up.

Ms. LOFGREN. I am sorry, I didn't realize I interrupted.

Mr. HARPER. This is clear that it appears to me that the only thing this will do is create—certainly create confusion for the 2010 elections, and I think it will have a negative impact on these, and we do know that ultimately at some point the FEC will put forth its regulations on this particular bill if it is passed. And there is

certainly nothing to be gained by rushing forward. This is a situation where we would be better off if we allowed the FEC time to do what they need to do. We know what we have been told, that there is no way they will have the regulations in place by this November election. With that, I yield back.

The CHAIRMAN. I thank the gentleman. Any additional debate on the amendment?

Ms. LOFGREN. Mr. Chairman, I will be brief because I know that there are other amendments but I think—I hope that this gets enacted and goes into effect as soon as possible. I just have a completely different viewpoint and I think our varying viewpoints on the effective date of the Act probably reflect our viewpoint of the decision itself.

I think that the lack of disclosure will have a negative impact on elections, and I think most of the American people share that view. And so I really—I hope that we can get this markup done today and that we can take it to the floor and that we can enact it and the President and the Senate can act, and the President can sign it and we can get this done so it is in place for this election as the American people hope, and I yield back.

The CHAIRMAN. I thank the gentlelady, any additional debate on the amendment to the substitute?

Mr. MCCARTHY. Thank you.

The CHAIRMAN. Mr. McCarthy.

Mr. MCCARTHY. I yield to Mr. Lungren.

Mr. LUNGREN. I was curious as to if anyone knows whether organizations like the Sierra Club, the National Rifle Association, groups like that, which I believe are covered under provisions of this law, would have their speech chilled in any way between now and the election if, in fact, we don't have clarification by way of regulations.

And, you know, we keep talking about corporations, and I remember when we had everybody testify in that first panel, actually, we looked it up and every one represented what was legally a corporation. I mean, I think we better understand, we are not just talking about big, you know, Federal contracting corporations in America, we are talking about little types of associations that happen to be incorporated, or I guess you could call National Rifle Association a large one. Sierra Club is a large one. We look left and right, and I think we ought to understand what the vagaries of the law would create here if you have this uncertainty. And there are people who do connect with those organizations because of a shared sense of purpose or a political idea.

And we ought to be aware that we are talking about a whole host of different kinds of associations that yes, are corporations under the law, but they are in the minds of most people associations. And if we create an uncertainty between now and the Election Day, they may very well not have the opportunity to express their First Amendment rights as suggested by the Supreme Court. So I thank the gentleman for yielding and I just hope that we will understand what happens if we in good conscience pass this knowing that the FEC is not going to have any opportunity to truly come up with regulations to advise people. So I thank the gentleman for yielding, I yield back.

Mr. MCCARTHY. I yield back the balance of my time.

The CHAIRMAN. I thank the gentleman, any additional amendment, Mr. Capuano.

Mr. CAPUANO. I want to make clear I associate myself with the comments of Ms. Lofgren, because I do want this enacted quickly, and I would love to work out my misclarifications or miscommunication in the bill as we are trying to do. I mean, any bill you pass always has some questions left when it is done. But I want to be clear from my perspective, as one Member of this House, if I could find a way to legally and constitutionally prohibit all outside groups from participating in my election, I would.

I think the elections should be between the candidates and the voters period. I can't find that way. And so therefore, if this has the unintended consequences of chilling out some people, I hope it chills out all, not one side, all sides. I—I hate the concept of faceless, nameless people who don't live in a district from participating. It is the law, it is the Constitution, I can complain all I want, but that is the way it is. I just want to be clear from this perspective I have no problem whatsoever if anybody wants to work with me to find a way to keep everybody out, including the parties—including the unions, Parties—how do you say it that in English? Parties. If I could find a way, I would do it.

Mr. LUNGREN. Is that where you park the car?

Mr. CAPUANO. Yes, it is as a matter of fact. The stenographer is going to have—there is an R in there somewhere. We don't need that extra letter either, in our language. So I just want to be clear about that. I think there is a respectful difference here, but I am not trying to hide from it one bit, so if we could keep all outside entities out of every election, if I could find a way, I would do it and do it happily.

The CHAIRMAN. I thank the gentleman. Is there any additional debate on the amendment to the substitute? Hearing none, the question on the amendment all those in favor say aye.

Those opposed say, no. In the opinion of the chair the noes have it.

Mr. HARPER. Mr. Chairman, I would request a recorded vote.

The CHAIRMAN. I ask the clerk to call the roll please.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

[No response.]

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Harper.

Mr. HARPER. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The noes are 5, the ayes are 3 the amendment does not pass.

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-7

SUBJECT: Mr. Harper – Amendment # 10

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez		X		53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama				52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

The CHAIRMAN. Any further amendments? Mr. McCarthy.

Mr. MCCARTHY. Thank you, Mr. Chairman, sorry for the delay. This amendment is number 6, sorry for the delay.

The CHAIRMAN. I recognize the gentleman.

[The information follows:]

Amendment #6

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 319(c) of the Federal Election Campaign Act of 1971, as proposed to be added by section 102(b) of the bill, strike "making" and insert "making in connection with an election for Federal office".

In section 319(c) of the Federal Election Campaign Act of 1971, as proposed to be added by section 102(b) of the bill, add at the end the following: "Nothing in this subsection shall be construed to apply to any contribution, donation, expenditure, independent expenditure, or disbursement from a separate segregated fund established and administered by a corporation under section 316(b)(2)(C).".

Mr. MCCARTHY. Thank you, Mr. Chairman. This kind of clarification amendment, this bill's current language requires corporations to certify that they don't violate any of the foreign national provisions of the legislation before they make any donation, contribution or expenditure. While the majority added language in the manager's amendment that stated nothing in this Act should be construed to prohibit a corporation from creating a PAC, the new language does nothing to change the requirement that an organization must certify they don't violate any of the foreign national provisions before they can act.

Under the language of the manager's amendment, they may create a PAC but without the proper certification the CEO of the company can be prosecuted for making contributions or expenditures from the PAC. And this is true for every PAC, not just those who status is affected by the new definition of foreign national.

Moreover, the manager's amendment does nothing to change or define the word "donation." The word is not defined in the existing statute, and can easily be interpreted as requiring prior certification for any contribution to a charitable or civic organization, not to mention a contribution to a State or local campaign or candidate.

This amendment would narrow the scope of the bill to where it belongs, money spent from general Treasury funds in connection with the Federal election. It would provide that charitable and civic donations as well as PAC contribution and expenditures may be made without a prior certification regarding foreign national status. This speaks to something that I think all members would argue is a problem, and I urge my colleagues to adopt this amendment.

The CHAIRMAN. I thank the gentleman. This Republican amendment could align with our manager's amendment. Since the PACs are restricted to only accept contributions from American citizens, there is less of a need for prior certification, and there is less of an argument that requires prior certification for charitable and civic donations to be deemed unnecessary, to protect the American elections from foreign influence. This amendment is a commonsense improvement to the bill, and I support it and I ask my colleagues to vote for it.

Mr. CAPUANO. Don't get used to it.

The CHAIRMAN. Any additional debate on the amendment? Hearing none in favor of the amendments signify by saying aye.

Any opposed, no. None so ordered the amendment is agreed to.

Okay. Any further amendments?

Mr. MCCARTHY. Further amendment, I believe this is number 7. While I am on a roll, Mr. Chairman, I thank you, currently union members serving in the Federal Government have the opportunity to take part in a government-administered payroll deduction program to pay their union dues. With the recent changes in the law, funds administered through this government program may now be used for political expenditures.

Mr. Chairman, one of the most consistently followed principles across our government is that government funds should not be used to subsidize political activity, and government employees should not be involved in political activity on the government's time.

Now principle is violated if the government collects and distributes funds that may be used for political expenditures. This amendment would provide that no funds obtained by a union through a government administered payroll deduction program may be used for political expenditures, I urge its adoption.

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 325(e)(1) of the Federal Election Campaign Act of 1971, as proposed to be added by section 212 of the bill, add at the end the following new subparagraph:

1 "(F) No portion of the amounts used to
2 make any such disbursements during the quar-
3 ter is attributable to funds received by the orga-
4 nization pursuant to an allotment made by an
5 office of the Federal government in accordance
6 with the requirements of chapter 71 of title 5,
7 United States Code.".

The CHAIRMAN. Any additional debate on this? Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I would just note that it is not the government's money, it is the payroll deduction of the employee, the union member and I think that this would really discriminate against labor unions when the bill has gone to great lengths to treat corporations and labor unions the same and I would urge opposition to the amendment.

The CHAIRMAN. Any additional debate to the amendment? The only concern I would have with this is if I am a painter, and have a contract to paint this room, and I paint this room and the United States Congress pays me, and I am a union painter that would then say that I can't make any contributions to anybody who runs for office the way I read this. And of course, we are constantly held to free speech rights belonging equal to unions as to corporations. So I don't—I don't agree with this amendment.

Mr. MCCARTHY. Well, Mr. Chairman, I appreciate your comment and the intent maybe I can work with you further on it. It is not to deny the person, it is just to not have government collecting and using government money to collect that, as much as we can't have the private sector be able to do it as well. So maybe there is some better language we can use to protect that.

The CHAIRMAN. I would love to work with the gentleman to do that. Thank you.

Any additional debate on the amendment? If not, the question is on the amendment, all those in favor say aye.

Any opposed, no. In the opinion of the chair—I took you for granted.

Mr. MCCARTHY. You never said.

The CHAIRMAN. The question is on the amendment. All those in favor say aye.

Those opposed say, no. In the opinion of the chair the noes have it. The noes have it.

Mr. MCCARTHY. Mr. Chairman, can I have a roll call vote?

The CHAIRMAN. Request a roll call vote? Will the clerk please call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

Mr. GONZALEZ. No.

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

[No response.]

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Harper.

Mr. HARPER. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The noes are 5 the yeas are 3, the amendment does not pass.

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-8

SUBJECT: Mr. McCarthy – Amendment # 7

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez		X		53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama				52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

Any additional—any further amendments?

Mr. MCCARTHY. Mr. Chairman, I have an amendment at the desk, number 9.

The CHAIRMAN. The gentleman is recognized.

[The information follows:]

Amendment #9

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

In section 304(g)(5)(A)(i)(I) of the Federal Election Campaign Act of 1971, as proposed to be added by section 211(a) of the bill, strike "$600" and insert "the amount referred to in subsection (b)(3)(A)".

In section 304(g)(5)(A)(ii)(I) of the Federal Election Campaign Act of 1971, as proposed to be added by section 211(a) of the bill, strike "$600" and insert "the amount referred to in subsection (b)(3)(A)".

In section 304(f)(6)(A)(i)(I) of the Federal Election Campaign Act of 1971, as proposed to be added by section 211(b) of the bill, strike "$1,000" and insert "the amount referred to in subsection (b)(3)(A)".

In section 304(f)(6)(A)(ii)(I) of the Federal Election Campaign Act of 1971, as proposed to be added by section 211(b) of the bill, strike "$1,000" and insert "the amount referred to in subsection (b)(3)(A)".

Mr. MCCARTHY. I want to go back to my earlier one, this is a clarifying one, consistency, you are going to like this one, I am introducing this amendment in the interest of consistency and clarity within the law. As we all know the current threshold for candidate PACs and political committees to itemize contributions is $200. Rather than creating a new arbitrary number further convoluting our already muddled campaign finance law, this amendment seeks to provide a uniform number after which every donor will have to itemize disclosures across the campaign finance system. Groups or individuals should not have to hire a lawyer to participate in the electoral process, if other members of this committee have reasons why we should be creating a new itemized threshold outside the current law I would be interested to debate and hear it, but absent that I think we should actually adopt it. Adopt the standard already in use for candidates in political committees, making the system easier for individuals to understand.

The other rationale is part of our debate and reason for the bill is greater transparency. This would allow the current consistency of $200 to be consistent throughout. And I think this amendment will simply and clarify and I urge your adoption.

The CHAIRMAN. I thank the gentleman. Any debate on the amendment? Mrs. Davis.

Mrs. DAVIS of California. Just to clarify, you are talking about just the minimal that is listed, you would certainly list anything in addition, anything over that.

Mr. MCCARTHY. Currently, the bill wouldn't itemize until you hit $600, but you or I would itemize at 200. So I am just saying let's keep it at the greater transparency within this bill at 200 instead of raising that to 600.

The CHAIRMAN. The only problem, sir, I have with that is that it punishes the small people. If I have a little civic association and I want to give them $500 to do a trash cleanup or beautification in the neighborhood, they would then have to declare that. And anything over the $200 limit they would have to declare that, that is why we put the $600 limit because a lot of these small groups don't request large money. Once they request the large money, then they can't contribute to a candidate.

Mr. MCCARTHY. All we are saying is when you itemize the contribution, you are reporting it. The FEC decided that $200 was all of our limit. Now we are crafting a bill that says we need greater transparency because of what is going on, and we need to have this bill done before the next election. So the people to know. I listened to Mr. Capuano making sure. All I am saying is in this bill that you are voting for $600, why wouldn't we keep the same limit that people decided upon everywhere else? What we are doing with the bill is raising it higher so people can do more. I think greater sunshine is always better and we already have it out there at 200. So why would we put one level somewhere else and other people at a different level? 200 has been decided, it is easier for people to understand because it is consistent throughout.

The CHAIRMAN. Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, I think the gentleman makes some good points, but I am glad to hear that after every Republican witness who we have had at these committees basically argued for no

disclosure whatsoever. I am glad to hear that you are for disclosure, does that mean you plan on voting for the final bill?

Mr. MCCARTHY. As you know we are marking it up. How do you know what the final bill looks like? What I am telling you right now, I am willing to work with you and make this bill better. But in that same hearing, I brought this issue up. We had that discussion, and all I am saying to you if we have found that $200 is good for all of us——

Mr. CAPUANO. Well, reclaiming my time. I understand your argument, it is a fair argument and raises some good points, but it just seems a little disingenuous if on one hand you argue against all disclosure, and on the other hand you argue for more. And I didn't reach this compromise number so don't get me wrong, I would love between now and the time this bill comes to the floor to find out where the numbers came from.

I don't—I think it is a fair point, don't get me wrong. At the same time I am a little hesitant to vote for the amendment at this point in time because I would love to know if the gentleman is in favor of disclosure, which if that is what he is, I am with him. But if he's not for disclosure and is only playing a political game, that raises a few concerns. I guess I will have to wait until the final bill to see——

Mr. MCCARTHY. No, no, no, no, no, no, no. If the gentleman would yield just for one second.

Mr. CAPUANO. I certainly would.

Mr. MCCARTHY. Part of the concept, I think you are marking up the bill and making the bill better. If I am proposing an amendment that clarifies it at 200 that gives it greater disclosing, I think that shows. If I would not vote for my own amendment, then I would be doing what you are saying. I will gladly tell you I am voting for this amendment. I think it is consistency, it is clarity and it is not confusing, and it is greater openness. $200.

Mr. CAPUANO. Reclaiming my time, then I guess I would probably vote against the amendment now, but if by the time it gets to the floor no one knows we have several more opportunities to amend this bill before it gets to the floor, I will be happy to work with them on a consistency item to make sure that we are all for the same degree of disclosure.

Mr. MCCARTHY. If the gentleman would yield. I respect your comments, but as you know, getting amendment on the floor in this Congress is much more difficult than using the committee process to improve it because you could maybe get it amended back the other way. But getting an amendment through the Rules Committee I have not been so successful this term.

Mr. CAPUANO. Well, reclaiming my time. I wasn't successful for 8 years. And so hence, I understand and I feel the gentleman's pain. Nonetheless, I would be happy to coauthor an appropriate amendment at the Rules Committee, once we decide whether we really are for disclosure or not and we can get an answer—I can get an answer that tells me where the $600 came from because the gentleman does raise good points, but I also have to withhold my support at the moment until we can find more common ground.

Mr. MCCARTHY. Just one last point to the gentleman.

Mr. CAPUANO. Go right ahead.

Mr. MCCARTHY. It is much easier to pass an amendment inside this committee than it would be on the floor. I would gladly respect your vote on the floor, but if we could take politics out of this and—I know we smile—if we could think about crafting any bill and take this out of it, the more consistency we have, the better it is to understand to the American public. If the American public has already said out there and there has been many debates long before the FEC has decided that $200 is the itemized number, we are creating confusion to everybody else if, in other predicaments were making it 600. That is raising it instead of lowering it.

Mr. CAPUANO. Reclaiming my time. The people who are filing this are not filing 200, $200 applies to us, not to them. So therefore these are new filings and there is no confusion in a new filing. That, actually, I would think they should be happy that they get 600 bucks, I actually thought you'd come in with an amendment to raise it to 6,000. That would have been more consistent with the arguments I heard during the hearings, and you might have gotten my vote but not now.

The CHAIRMAN. Is there any additional debate on the amendment to the substitute? If not the question is on the amendment, all those in favor signify by saying aye.

All those opposed, no.

Mr. CAPUANO. Not at the moment.

Mr. MCCARTHY. I would ask for a roll call.

The CHAIRMAN. I ask the clerk to call the roll, please.

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

[No response.]

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Harper.

Mr. HARPER. Aye.

The CLERK. Mr. Chairman.

The CHAIRMAN. No. The nays are 4 the yeas are 3, the amendment does not pass. Any further amendments?

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111–9

SUBJECT: Mr. McCarthy – Amendment # 9

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez				53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama				52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

Mr. MCCARTHY. I have got one more to try at you. I have two more, just one more. This is 11 A, one of the concerns brought up at our latest hearing with this legislation unintentionally regulates speech on the Internet.

Ms. LOFGREN. Would the gentleman yield for clarification.

Mr. MCCARTHY. Sure.

Ms. LOFGREN. That is the one that begins with the end of Title 1.

Mr. MCCARTHY. Let me verify what we are looking at. Yes.

Ms. LOFGREN. Thank you very much.

Mr. MCCARTHY. You have it? Okay. It is 11(a). The Internet is one of the greatest opportunities for citizens to voice their opinion in a new kind of digital town square. Blogs, online news sources, and e-mail newsletters are great ways for people to be able to communicate within their communities and in turn with their elected Representatives. We should be supporting and encouraging the free and unfettered flow of ideas that can help us serve our constituents better.

While I appreciate the majority's attempt to address this issue in the manager's amendment, I think it might fall short a little. The manager's amendment tries to deal with this issue by indirectly trying to define and describe the unique circumstances of blogger interaction with elected officials in section 103. However, not only is this language unclear, it does not cover the other possible sections in the bill that this could become a problem, including sections 201 and 214. I think the better approach would be to address this issue directly rather than indirectly, which is the reason for this amendment.

The amendment adds language which states: "A communication which is disseminated to the Internet shall be treated as a form of general public advertising under this paragraph unless the communication was placed for a fee or on another person's Web site."

I urge the committee's adoption.

[The information follows:]

Amendment No. 11A

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

Add at the end of title I the following new section (and conform the table of contents accordingly):

1 **SEC. 105. RESTRICTION ON INTERNET COMMUNICATIONS**
2 **TREATED AS PUBLIC COMMUNICATIONS.**

3 (a) IN GENERAL.—Section 301(22) of the Federal
4 Election Campaign Act of 1971 (2 U.S.C. 431(22)) is
5 amended by adding at the end the following new sentence:
6 "A communication which is disseminated through the
7 Internet shall not be treated as a form of general public
8 political advertising under this paragraph unless the com-
9 munication was placed for a fee on another person's Web
10 site.".

11 (b) EFFECTIVE DATE.—The amendment made by
12 subsection (a) shall take effect on the date of the enact-
13 ment of this Act.

The CHAIRMAN. The FEC is made aware of the amendment and from their read did not raise any major concerns. Several outside groups have lobbied over the years to finally have this provision put in law, and expressed an interest to have this included in the manager's amendment.

I support the amendment and I also encourage the members to support it as well.

Ms. Lofgren.

Ms. LOFGREN. Mr. Chairman, I just wanted to say I agree with this amendment. I think it is a good addition, and really the logic of it is—the barrier to entry on Internet advertising is very low, and it is one of those areas where whether you're a giant corporation or an 18-year-old with a laptop, I mean you really have somewhat equivalent opportunities to create content.

I think this is a very sensible amendment and I am glad you offered it and I support it.

The CHAIRMAN. Any additional debate on the amendment?

Mr. MCCARTHY. Well, I thank you for the kind words and—no, I take it. Just relook at my last amendment, too.

The CHAIRMAN. All those in favor indicate so by saying aye.

Opposed, no.

The ayes have it. The amendment is agreed to.

Mr. LUNGREN. Mr. Chairman, I have another amendment, amendment No. 13.

The CHAIRMAN. The gentleman is recognized.

[The information follows:]

Amendment No. 13

Amendment to H.R. 5175

Offered by M

Amend section 317(a) of the Federal Election Campaign Act (2 U.S.C. § 441c(a)) as follows:

Insert after "It shall be unlawful for any person" the following:

"or a labor organization representing any employees of such person".

Mr. LUNGREN. When we had the discussion earlier about the difference between unions and corporations, the argument was made by the gentleman from Alabama that we had a different situation involving someone who was a union member, a union which was of a contractor as opposed to a union of Federal employees. And this amendment is drafted to talk about a labor organization representing an employee of such organization which would thereby be restricted.

In other words, if, in fact, we think that there is undue influence from a Federal contractor, then this would say a labor organization representing that contractor would seemingly be in the same situation; that is, that that union would only receive a benefit if, in fact, the contract was let, and therefore the same sort of potential corruption.

And I am not one that is satisfied that that is corruption of the level that the Supreme Court would find, but if, in fact, that is a given under this bill, then in fact a labor organization representing the employees of a quote-unquote "banned corporation" frankly stand in the same shoes as that banned corporation. And in this case I would think that you have the same argument of interest and therefore the same argument of potential conflicts.

This is not a generalized idea of unions negotiating as taxpayer or public employees. This goes to the unions representing employees of the contractors that we have decided could provide that kind of a conflict of interest—well, more than a conflict of interest—that type of potential corruption. And in this case, all I am asking is that the union be treated the same as the corporation because essentially it stands in the same shoes.

And with that, I yield back the balance of my time.

The CHAIRMAN. Is there any additional debate on this amendment?

The only issue I have, sir, is that we just got this right now, like right now. I understand your concerns are sometimes you don't get things too quickly, as you stated, but we just looked at this right now to look at section 317(a) in the Federal Elections Campaign Act and go through all that. I just think that at this particular time we have no problem trying to look at this work with you again, and trying to make sure we can get it done and trying to be supportive of it. But right now, none of us have had any chance to look at this.

Mrs. Davis.

Mrs. DAVIS of California. Mr. Chairman, just quickly, I am trying to think through all these big—General Dynamics, for example, which contracts with the Federal Government to build ships, and they have union steelworkers there. Are you saying that you would have difficulty with the steelworkers who, by virtue of having jobs, I guess, somehow would be part of the contract, that you feel would be included in this bill? Is that what you're talking about? Because I am a little confused——

Mr. LUNGREN. Yes. What I am saying is this: If in fact the underlying proposition is that by virtue of being a government contractor, you therefore subject the public at large to the possibility of corruption such that we can limit this type of political speech that is otherwise allowed under Citizens United, that same argu-

ment, it seems to me, would be sufficient with respect to the labor organization which benefits in like manner as the contractor would.

I mean I think—again, I am not one that necessarily believes that this is going to pass the constitutional question, but if in fact the concern about corruption is valid, then it would be just as valid with respect to the labor union that benefits just as directly as the contractor does because——

Mrs. DAVIS of California. I don't think it is a direct correlation in that sense. I am trying to understand——

Mr. LUNGREN. I understand what you are saying but——

Mrs. DAVIS of California. Thank you. I think we can look at it now that we have it, but if that's your line of thinking I wanted to double-check that. Thank you.

The CHAIRMAN. Is there any additional debate on the amendment to the substitute?

If not, the question is on the amendment.

All those in favor signify by saying aye.

Those opposed, no.

Mr. LUNGREN. Mr. Chairman, I ask for a roll call.

The CHAIRMAN. Will the Clerk call the roll, please?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. No.

The CLERK. Mr. Capuano.

Mr. CAPUANO. No.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. No.

The CLERK. Mr. Davis of Alabama.

[No response.]

The CLERK. Mr. Lungren.

Mr. LUNGREN. Aye.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. Aye.

The CLERK. Mr. Harper.

Mr. HARPER. Aye.

The CLERK. Mr. Brady

The CHAIRMAN. No.

The noes are four, the ayes are three. The noes have it. The amendment is not agreed to.

[The information follows:]

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-10

SUBJECT: Mr. Lungren – Amendment # 13

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren		X		53072
Mr. Capuano		X		551111
Mr. Gonzalez				53236
Mrs. Davis, of California		X		52040
Mr. Davis, of Alabama				52665
Mr. Lungren	X			55716
Mr. McCarthy	X			52915
Mr. Harper	X			55031
Mr. Brady		X		54731

Are there any further amendments?

Ms. LOFGREN. Mr. Chairman.

The CHAIRMAN. Ms. Lofgren.

Ms. LOFGREN. I have three amendments. The first one is a technical amendment, retitling subtitles A, B and C, and also changing the words "any campaign" to "the candidate's campaign" on Page 21, line 17. I think these are technical amendments and hopefully we can do it by voice.

[The information follows:]

AMENDMENT OFFERED BY _____

TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Page and line nos. refer to document of May 19, 2010, 1:36 p.m.)

Page 16, line 23, strike "establishing and administering" and insert "establishing, administering, and soliciting contributions to".

Page 21, line 17, strike "any campaign" and insert "the candidate's campaign".

Page 29, line 15, strike "**Subtitle A**" and insert "**Subtitle B**".

Page 80, line 1, strike "**Subtitle B**" and insert "**Subtitle C**".

Mr. LUNGREN. Mr. Chairman, on this side we would support these technical amendments.

The CHAIRMAN. I thank the gentleman.

Any additional debate on the amendment to the substitute?

Hearing none, all those in favor signify by saying aye.

Opposed, no.

The ayes have it. The amendment is agreed to.

Ms. LOFGREN. Mr. Chairman, I have an amendment, Lofgren amendment No. 2, that relates to political Robocalls.

[The information follows:]

AMENDMENT OFFERED BY MS. ZOE LOFGREN OF CALIFORNIA TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Page and line nos. refer to document of May 19, 2010, 1:36 p.m.)

Page 79, add after line 22 the following:

1 (4) APPLICATION TO POLITICAL ROBOCALLS.—
2 Section 318 of such Act (2 U.S.C. 441d), as amend-
3 ed by paragraph (2), is further amended by adding
4 at the end the following new subsection:
5 "(f) SPECIAL RULES FOR POLITICAL ROBOCALLS.—
6 "(1) REQUIRING COMMUNICATIONS TO INCLUDE
7 CERTAIN DISCLAIMER STATEMENTS.—Any commu-
8 nication consisting of a political robocall which
9 would be subject to the requirements of subsection
10 (e) if the communication were transmitted through
11 radio or television shall include the following:
12 "(A) The individual disclosure statement
13 described in subsection (e)(2) (if the person
14 paying for the communication is an individual)
15 or the organizational disclosure statement de-

1 scribed in subsection (e)(3) (if the person pay-
2 ing for the communication is not an individual).
3 "(B) If the communication is an election-
4 eering communication or an independent ex-
5 penditure consisting of a public communication
6 and is paid for in whole or in part with a pay-
7 ment which is treated as a disbursement by a
8 covered organization for campaign-related activ-
9 ity under section 325, the significant funder
10 disclosure statement described in subsection
11 (e)(4) (if applicable).
12 "(2) TIMING OF CERTAIN STATEMENT.—The
13 statement required to be included under paragraph
14 (1)(A) shall be made at the beginning of the political
15 robocall.
16 "(3) POLITICAL ROBOCALL DEFINED.—In this
17 subsection, the term 'political robocall' means any
18 outbound telephone call—
19 "(A) in which a person is not available to
20 speak with the person answering the call, and
21 the call instead plays a recorded message; and
22 "(B) which promotes, supports, attacks, or
23 opposes a candidate for election for Federal of-
24 fice.".

Ms. LOFGREN. We had a hearing in the Election Subcommittee in the last Congress, and I will never forget Virginia Foxx talking about her wonderful experience of anonymous in-the-middle-of-the-night Robocalls from people pretending to be her campaign, and undisclosed. And we put together a bill to require, at the beginning of the political Robocall who was was making the call. We also in the amendment require that major funders also identify themselves, using the same definition as is the case in the rest of the bill.

However Mr. Lungren's staff made a good point; that if it is a long list, it shouldn't necessarily be at the beginning of the bill. And I agree with that. It could be very awkward. So that section would not have to be at the beginning of the bill, but—of the call, but it needs to be in the call.

And I wanted to mention Congresswoman Melissa Bean, who also has been very active in promoting this, and Mr. Lungren and I have talked about this for some time as well. I don't know if he—I hope he is in support of the amendment, but certainly he has had a great interest in this.

One of the concerns expressed during the hearing and in our brief discussions was we don't want to do anything that would have an adverse impact on telephone townhalls. And in talking to the lawyers and in looking at the amendment, I am confident that this would not have any impact on telephone townhalls because it has to do with political campaigns, and the telephone townhalls are official speech that we are doing.

So I offer this amendment. I hope that we can support it. I think certainly the mischief that is done is unfair to voters. I remember the testimony we had of repeated calls that were made at 2:00 and 3:00 in the morning, anonymous calls from people purporting to be the candidate. And as you can imagine, by the time of the election, you have been woken up three or four times in the middle of the night, you are not inclined to support that candidate.

That kind of mischief is really not what elections should be about, and this would prevent it. And I think certainly the victims of this kind of fraud are on both sides of the aisle, but the real victims are the voters who are misled and abused. So I hope that this amendment can gain support.

And I yield back, Mr. Chairman.

The CHAIRMAN. I thank the lady.

Any additional debate on the amendment?

Mr. LUNGREN. Mr. Chairman.

The CHAIRMAN. Mr. Lungren.

Mr. LUNGREN. Mr. Chairman, just briefly. On the floor yesterday, I had a chance to look at at least what purported to be the amendment at that time. Subsequently, through my staff, I indicated my concern about requiring upfront not only to identify the source of the call but also the major contributors, and I appreciate the fact that I understand you have offered it so that that is not the case——

Ms. LOFGREN. That is correct. The maker of the call would have to be identified at the beginning, but the major funders would be at the end.

Mr. LUNGREN. So I appreciate that change.

I still have two concerns. And one I am not sure we can ever get around, and that is, having been subjected to suppression calls on Election Day that I believe were effective but technically did not state support of a candidate or opposition to a candidate, this doesn't really help us with that, and I am not sure we can do that. So that is why I would like to see if we would work a little more than that.

But the other thing in terms of tele-townhalls, I was not only referring to those of our official, but tele-townhalls are also utilized in the political context. And I think they are of benefit both to the candidate and to the electorate.

The definition utilized in this, in your last several lines—and, again, I don't have a copy of it in front of me—it seems to me would implicate this as covering tele-townhalls; and it is just because in doing tele-townhalls, you record two messages: one for people who are at home; one for people who are not. And the one for people at home, it is a recorded message; they can't immediately talk to the recorded message, but if they stay on the line, then they engage you, I think, under the definition that is included here.

So I would like to work to try to clarify that, and so I am going to withhold support of it at this time. I do understand where you are going. I happen to believe that it makes good sense to identify people who are calling in Robocalls. I just have a problem with some of the language here and some of the concepts. So hopefully we can work in the future——

Ms. LOFGREN. Would the gentleman yield?

Mr. LUNGREN. I would be happy to.

Ms. LOFGREN. I hope that we can adopt this today, but I certainly will continue to discuss this, because I think as it is written now, if it is a political Robocall, you would have to identify yourself.

Mr. LUNGREN. You mean a political—a tele-townhall?

Ms. LOFGREN. Yes. And I think that is not too great a burden, but I mean we can continue to talk. I understand that there are certain types of suppression Robocalls that this would not necessarily cover, and those are bad. But I hope that we wouldn't continue not to do something good because we can't do everything.

Mr. LUNGREN. You see, the whole purpose of the tele-townhall is different than a Robocall in that you are trying to at least——

Ms. LOFGREN. No. I mean we all do that——

Mr. LUNGREN. But I mean you are trying to get people to get on. And it is just the format in that situation, it seems to me, is somewhat different than a Robocall, because the purpose of the tele-townhall is to identify who you are. It doesn't necessarily fit that same formula.

Ms. LOFGREN. I understand that, but if the gentleman would continue to yield.

Mr. LUNGREN. Yes.

Ms. LOFGREN. On the message that you record—actually the real issue is the messages that are left because there would not be a dialogue. And in the recording of the message that is left, you would have to identify who you are making the call, which I think we generally do anyhow——

Mr. LUNGREN. Which is what you want to do anyway.

Ms. LOFGREN. Which you want to do anyhow. So I hope that we can adopt this. Let's continue to talk if there are refinements that can be made. I don't think we are disagreeing on what we want to accomplish, honestly.

I thank the gentleman for yielding.

The CHAIRMAN. Mr. McCarthy.

Mr. MCCARTHY. I was in the hearings last time we did Robocalls, too. I would be willing to work with you on this. I mean, you may have seen it on the floor, but I am just now seeing it. And instead of doing something in a very hurried method, I mean I will tell you I will work with you. I think people need to identify on these two. And the way technology is being used, I would just ask if we could hold this off and move forward, and we can work with you on an amendment for the floor, doing it jointly, or how we move forward with it.

I yield back.

The CHAIRMAN. I thank the gentleman.

Any additional debate on the amendment to the substitute? If not, the question is on the amendment.

All those in favor, say aye.

Opposed, no.

The ayes have it. The ayes have it. The amendment is agreed to.

Mr. MCCARTHY. Can we ask for a roll call?

The CHAIRMAN. Certainly. The Clerk will call the roll, please.

Mr. MCCARTHY. All right, forget it.

The CHAIRMAN. All right, forget it.

Any further amendments?

Ms. LOFGREN. I have one more amendment.

The CHAIRMAN. Ms. Lofgren.

[The information follows:]

AMENDMENT OFFERED BY _____

TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Page and line nos. refer to document of May 19, 2010, 1:36 p.m.)

Page 12, line 21, strike "$50,000" and insert "$1,000,000".

Ms. LOFGREN. The amendment has to do with changing the threshold amount for contractors, government contractors, being covered under the act. In the measure before us it is currently, I believe, at $50,000, and this amendment would increase that threshold amount to $7 million. And here is the reason why: The amendment—the concern that we have is about large corporations having an undue influence—the concern I have—in anonymous contributions and impacting campaigns to the detriment of the American people.

I am not actually concerned that small businesses are going to engage in that activity for a number of reasons. For one, they don't have the cash to do it. And the small businesses in America are really part of the mom-and-pop voters. It is not the faceless, anonymous large corporations that have caused our concern. The $7 million is what is used to define small businesses in the SBA. That is why I have suggested that as a threshold.

I think this improves the bill, and I hope that we can all support it. And I yield back.

The CHAIRMAN. Is there any additional debate on the amendment to the substitute?

Hearing none, the question is on the amendment.

All those in favor, signify by saying aye.

Those opposed, no.

In the opinion of the Chair the ayes have it. The ayes have it and the amendment is agreed to.

Ms. LOFGREN. Thank you, Mr. Chairman.

The CHAIRMAN. Any further amendments? Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, I have a couple of amendments. I may as well start with amendment No. 1, the Fair Elections Now Act.

[The information follows:]

AMENDMENT TO H.R. 5175

OFFERED BY MR. CAPUANO

Insert after title III the following (and conform the table of contents accordingly):

1 **TITLE IV—FAIR ELECTIONS NOW**

2 **SEC. 400. SHORT TITLE; FINDINGS.**

3 (a) SHORT TITLE.—This title may be cited as the
4 "Fair Elections Now Act".

5 (b) FINDINGS AND DECLARATIONS.—

6 (1) UNDERMINING OF DEMOCRACY BY CAM-
7 PAIGN CONTRIBUTIONS FROM PRIVATE SOURCES.—
8 The House of Representatives finds and declares
9 that the current system of privately financed cam-
10 paigns for election to the House of Representatives
11 has the capacity, and is often perceived by the pub-
12 lic, to undermine democracy in the United States
13 by—

14 (A) creating a culture that fosters actual
15 or perceived conflicts of interest, by encour-
16 aging Members of the House to accept large
17 campaign contributions from private interests
18 that are directly affected by Federal legislation;

1 (B) diminishing or appearing to diminish
2 Members' accountability to constituents by com-
3 pelling legislators to be accountable to the
4 major contributors who finance their election
5 campaigns;
6 (C) undermining the meaning of the right
7 to vote by allowing monied interests to have a
8 disproportionate and unfair influence within the
9 political process;
10 (D) imposing large, unwarranted costs on
11 taxpayers through legislative and regulatory
12 distortions caused by unequal access to law-
13 makers for campaign contributors;
14 (E) making it difficult for some qualified
15 candidates to mount competitive House election
16 campaigns;
17 (F) disadvantaging challengers and dis-
18 couraging competitive elections, because large
19 campaign contributors tend to donate their
20 money to incumbent Members, thus causing
21 House elections to be less competitive; and
22 (G) burdening incumbents with a pre-
23 occupation with fundraising and thus decreas-
24 ing the time available to carry out their public
25 responsibilities.

1 (2) ENHANCEMENT OF DEMOCRACY BY PRO-
2 VIDING ALLOCATIONS FROM THE FAIR ELECTIONS
3 FUND.—The House of Representatives finds and de-
4 clares that providing the option of the replacement
5 of large private campaign contributions with alloca-
6 tions from the Fair Elections Fund for all primary,
7 runoff, and general elections to the House of Rep-
8 resentatives would enhance American democracy
9 by—
10 (A) reducing the actual or perceived con-
11 flicts of interest created by fully private finance-
12 ing of the election campaigns of public officials
13 and restoring public confidence in the integrity
14 and fairness of the electoral and legislative
15 processes through a program which allows par-
16 ticipating candidates to adhere to substantially
17 lower contribution limits for contributors with
18 an assurance that there will be sufficient funds
19 for such candidates to run viable electoral cam-
20 paigns;
21 (B) increasing the public's confidence in
22 the accountability of Members to the constitu-
23 ents who elect them, which derives from the
24 program's qualifying criteria to participate in
25 the voluntary program and the conclusions that

1 constituents may draw regarding candidates
2 who qualify and participate in the program;
3 (C) helping to reduce the ability to make
4 large campaign contributions as a determinant
5 of a citizen's influence within the political proc-
6 ess by facilitating the expression of support by
7 voters at every level of wealth, encouraging po-
8 litical participation, incentivizing participation
9 on the part of Members through the matching
10 of small dollar contributions;
11 (D) potentially saving taxpayers billions of
12 dollars that may be (or that are perceived to
13 be) currently allocated based upon legislative
14 and regulatory agendas skewed by the influence
15 of campaign contributions;
16 (E) creating genuine opportunities for all
17 Americans to run for the House of Representa-
18 tives and encouraging more competitive elec-
19 tions;
20 (F) encouraging participation in the elec-
21 toral process by citizens of every level of wealth;
22 and
23 (G) freeing Members from the incessant
24 preoccupation with raising money, and allowing

1 them more time to carry out their public re-
2 sponsibilities.

3 Subtitle A—Fair Elections Financ-
4 ing of House Election Cam-
5 paigns

6 **SEC. 401. BENEFITS AND ELIGIBILITY REQUIREMENTS FOR**
7 **HOUSE CANDIDATES.**

8 The Federal Election Campaign Act of 1971 (2
9 U.S.C. 431 et seq.) is amended by adding at the end the
10 following:

11 "TITLE V—FAIR ELECTIONS FI-
12 NANCING OF HOUSE ELEC-
13 TION CAMPAIGNS

14 "Subtitle A—Benefits

15 **"SEC. 501. BENEFITS FOR PARTICIPATING CANDIDATES.**

16 "(a) IN GENERAL.—If a candidate for election to the
17 office of Representative in, or Delegate or Resident Com-
18 missioner to, the Congress is certified as a participating
19 candidate under this title with respect to an election for
20 such office, the candidate shall be entitled to payments
21 under this title, to be used only for authorized expendi-
22 tures in connection with the election.

23 "(b) TYPES OF PAYMENTS.—The payments to which
24 a participating candidate is entitled under this section
25 consist of—

1 "(1) allocations from the Fair Elections Fund,
2 as provided in section 502; and
3 "(2) payments from the Fair Elections Fund to
4 match certain small dollar contributions, as provided
5 in section 503.

6 **"SEC. 502. ALLOCATIONS FROM THE FUND.**

7 "(a) AMOUNT OF ALLOCATIONS.—
8 "(1) PRIMARY ELECTION ALLOCATION; INITIAL
9 ALLOCATION.—Except as provided in paragraph (6),
10 the Commission shall make an allocation from the
11 Fair Elections Fund established under section 531
12 to a candidate who is certified as a participating
13 candidate with respect to a primary election in an
14 amount equal to 40 percent of the base amount .
15 "(2) PRIMARY RUNOFF ELECTION ALLOCA-
16 TION.—The Commission shall make an allocation
17 from the Fund to a candidate who is certified as a
18 participating candidate with respect to a primary
19 runoff election in an amount equal to 25 percent of
20 the amount the participating candidate was eligible
21 to receive under this section for the primary election.
22 "(3) GENERAL ELECTION ALLOCATION.—Ex-
23 cept as provided in paragraph (6), the Commission
24 shall make an allocation from the Fund to a can-
25 didate who is certified as a participating candidate

1 with respect to a general election in an amount
2 equal to 60 percent of the base amount.
3 "(4) GENERAL RUNOFF ELECTION ALLOCA-
4 TION.—The Commission shall make an allocation
5 from the Fund to a candidate who is certified as a
6 participating candidate with respect to a general
7 runoff election in an amount equal to 25 percent of
8 the base amount.
9 "(5) RECOUNT ALLOCATION.—If the appro-
10 priate State or local election official conducts a re-
11 count of an election, the Commission shall make an
12 allocation from the Fund to a participating can-
13 didate for expenses relating to the recount in an
14 amount equal to 25 percent of the amount the par-
15 ticipating candidate was eligible to receive under this
16 section for the election involved.
17 "(6) UNCONTESTED ELECTIONS.—
18 "(A) IN GENERAL.—In the case of a pri-
19 mary or general election that is an uncontested
20 election, the Commission shall make an alloca-
21 tion from the Fund to a participating candidate
22 for such election in an amount equal to 25 per-
23 cent of the allocation for that election with re-
24 spect to such candidate.

1 "(B) UNCONTESTED ELECTION DE-
2 FINED.—For purposes of this subparagraph, an
3 election is uncontested if not more than 1 can-
4 didate has campaign funds (including payments
5 from the Fund) in an amount equal to or great-
6 er than 10 percent of the allocation a candidate
7 would be entitled to receive under this section
8 for that election (determined without regard to
9 this paragraph).
10 "(b) BASE AMOUNT.—The base amount is an amount
11 equal to 80 percent of the national average spending of
12 the cycle by winning candidates for the office of Rep-
13 resentative in, or Delegate or Resident Commissioner to,
14 the Congress in the last 2 election cycles.
15 "(c) TIMING; METHOD OF PAYMENT.—
16 "(1) TIMING.—The Commission shall make the
17 allocations required under subsection (a) to a par-
18 ticipating candidate—
19 "(A) in the case of amounts provided
20 under subsection (a)(1), not later than 48 hours
21 after the date on which such candidate is cer-
22 tified as a participating candidate under section
23 515;
24 "(B) in the case of a general election, not
25 later than 48 hours after—

"(i) the date of the certification of the results of the primary election or the primary runoff election; or

"(ii) in any case in which there is no primary election, the date the candidate qualifies to be placed on the ballot; and

"(C) in the case of a primary runoff election or a general runoff election, not later than 48 hours after the certification of the results of the primary election or the general election, as the case may be.

"(2) METHOD OF PAYMENT.—The Commission shall distribute funds available to participating candidates under this section through the use of an electronic funds exchange or a debit card.

"SEC. 503. MATCHING PAYMENTS FOR CERTAIN SMALL DOLLAR CONTRIBUTIONS.

"(a) IN GENERAL.—The Commission shall pay to each participating candidate an amount equal to 400 percent of the amount of qualified small dollar contributions received by the candidate from individuals who are residents of the State in which such participating candidate is seeking election.

"(b) LIMITATION.—The maximum payment under this section shall be the greater of—

1 "(1) 200 percent of the allocation under para-
2 graphs (1) through (4) of section 502(a) for that
3 election with respect to such candidate; or
4 "(2) the percentage of the allocation determined
5 by the Commission under section 532(c)(2).
6 "(c) TIME OF PAYMENT.—The Commission shall
7 make payments under this section not later than 2 busi-
8 ness days after the receipt of a report made under sub-
9 section (d).
10 "(d) REPORTS.—
11 "(1) IN GENERAL.—Each participating can-
12 didate shall file reports of receipts of qualified small
13 dollar contributions at such times and in such man-
14 ner as the Commission may by regulations prescribe.
15 "(2) CONTENTS OF REPORTS.—Each report
16 under this subsection shall disclose—
17 "(A) the amount of each qualified small
18 dollar contribution received by the candidate;
19 "(B) the amount of each qualified small
20 dollar contribution received by the candidate
21 from a resident of the State in which the can-
22 didate is seeking election; and
23 "(C) the name, address, and occupation of
24 each individual who made a qualified small dol-
25 lar contribution to the candidate.

1 "(3) FREQUENCY OF REPORTS.—Reports under
2 this subsection shall be made no more frequently
3 than—
4 "(A) once every month until the date that
5 is 90 days before the date of the election;
6 "(B) once every week after the period de-
7 scribed in subparagraph (A) and until the date
8 that is 21 days before the election; and
9 "(C) once every day after the period de-
10 scribed in subparagraph (B).
11 "(4) LIMITATION ON REGULATIONS.—The
12 Commission may not prescribe any regulations with
13 respect to reporting under this subsection with re-
14 spect to any election after the date that is 180 days
15 before the date of such election.
16 "(e) APPEALS.—The Commission shall provide a
17 written explanation with respect to any denial of any pay-
18 ment under this section and shall provide for the oppor-
19 tunity for review and reconsideration within 5 business
20 days of such denial.
21 "(f) QUALIFIED SMALL DOLLAR CONTRIBUTION DE-
22 FINED.—The term 'qualified small dollar contribution'
23 means, with respect to a participating candidate, any con-
24 tribution (or a series of contributions)—

1 "(1) which is not a qualifying contribution (or
2 does not include a qualifying contribution);
3 "(2) which is made by an individual who is not
4 prohibited from making a contribution under this
5 Act; and
6 "(3) the aggregate amount of which does not
7 exceed the greater of—
8 "(A) $100 per election; or
9 "(B) the amount determined by the Fair
10 Elections Oversight Board under section
11 532(c)(2).

12 **"Subtitle B—Eligibility and**
13 **Certification**

14 **"SEC. 511. ELIGIBILITY.**

15 "(a) IN GENERAL.—A candidate for the office of
16 Representative in, or Delegate or Resident Commissioner
17 to, the Congress is eligible to be certified as a participating
18 candidate under this title with respect to an election if
19 the candidate meets the following requirements:
20 "(1) During the election cycle for the office in-
21 volved, the candidate files with the Commission a
22 statement of intent to seek certification as a partici-
23 pating candidate under this title.
24 "(2) The candidate meets the qualifying re-
25 quirements of section 512.

1 "(3) Not later than the last day of the Fair
2 Elections qualifying period, the candidate files with
3 the Commission an affidavit signed by the candidate
4 and the treasurer of the candidate's principal cam-
5 paign committee declaring that the candidate—
6 "(A) has complied and, if certified, will
7 comply with the contribution and expenditure
8 requirements of section 521;
9 "(B) if certified, will comply with the de-
10 bate requirements of section 514;
11 "(C) if certified, will run only as a partici-
12 pating candidate for all elections for the office
13 that such candidate is seeking during the elec-
14 tion cycle; and
15 "(D) has either qualified or will take steps
16 to qualify under State law to be on the ballot.
17 "(b) GENERAL ELECTION.—Notwithstanding sub-
18 section (a), a candidate shall not be eligible to receive an
19 allocation from the Fund for a general election or a gen-
20 eral runoff election unless the candidate's party nominated
21 the candidate to be placed on the ballot for the general
22 election or the candidate is otherwise qualified to be on
23 the ballot under State law.
24 "(c) FAIR ELECTIONS QUALIFYING PERIOD DE-
25 FINED.—The term 'Fair Elections qualifying period'

1 means, with respect to any candidate for the office of Rep-
2 resentative in, or Delegate or Resident Commissioner to,
3 the Congress, the period during the election cycle for such
4 office—

5 "(1) beginning on the date on which the can-
6 didate files a statement of intent under section
7 511(a)(1); and

8 "(2) ending on the date that is 60 days be-
9 fore—

10 "(A) the date of the primary election; or

11 "(B) in the case of a State that does not
12 hold a primary election, the date prescribed by
13 State law as the last day to qualify for a posi-
14 tion on the general election ballot.

15 **"SEC. 512. QUALIFYING REQUIREMENTS.**

16 "(a) RECEIPT OF QUALIFYING CONTRIBUTIONS.—A
17 candidate for the office of Representative in, or Delegate
18 or Resident Commissioner to, the Congress meets the re-
19 quirement of this section if, during the Fair Elections
20 qualifying period described in section 511(c), the can-
21 didate obtains—

22 "(1) a single qualifying contribution from a
23 number of individuals equal to or greater than the
24 lesser of—

1 "(A) .25% of the voting age population of
2 the State involved (as reported in the most re-
3 cent decennial census), or
4 "(B) 1,500; and
5 "(2) a total dollar amount of qualifying con-
6 tributions equal to or greater than $50,000.
7 "(b) REQUIREMENTS RELATING TO RECEIPT OF
8 QUALIFYING CONTRIBUTION.—Each qualifying contribu-
9 tion—
10 "(1) may be made by means of a personal
11 check, money order, debit card, credit card, or elec-
12 tronic payment account;
13 "(2) shall be accompanied by a signed state-
14 ment containing—
15 "(A) the contributor's name and the con-
16 tributor's address in the State in which the con-
17 tributor is registered to vote;
18 "(B) an oath declaring that the contrib-
19 utor—
20 "(i) understands that the purpose of
21 the qualifying contribution is to show sup-
22 port for the candidate so that the can-
23 didate may qualify for Fair Elections fi-
24 nancing;

1 "(ii) is making the contribution in his
2 or her own name and from his or her own
3 funds;
4 "(iii) has made the contribution will-
5 ingly; and
6 "(iv) has not received any thing of
7 value in return for the contribution; and
8 "(3) shall be acknowledged by a receipt that is
9 sent to the contributor with a copy kept by the can-
10 didate for the Commission and a copy kept by the
11 candidate for the election authorities in the State
12 with respect to which the candidate is seeking elec-
13 tion; and
14 "(e) VERIFICATION OF QUALIFYING CONTRIBU-
15 TIONS.—The Commission shall establish procedures for
16 the auditing and verification of qualifying contributions to
17 ensure that such contributions meet the requirements of
18 this section.
19 "(d) QUALIFYING CONTRIBUTION DEFINED.—The
20 term 'qualifying contribution' means, with respect to a
21 candidate, a contribution that—
22 "(1) is in an amount that is—
23 "(A) not less than the greater of $5 or the
24 amount determined by the Commission under
25 section 532(e)(2); and

1 "(B) not more than the greater of $100 or
2 the amount determined by the Commission
3 under section 532(c)(2).
4 "(2) is made by an individual—
5 "(A) who is a resident of the State in
6 which such Candidate is seeking election; and
7 "(B) who is not otherwise prohibited from
8 making a contribution under this Act;
9 "(3) is made during the Fair Elections quali-
10 fying period described in section 511(c); and
11 "(4) meets the requirements of subsection (b).
12 **"SEC. 513. CERTIFICATION.**
13 "(a) DEADLINE AND NOTIFICATION.—
14 "(1) IN GENERAL.—Not later than 5 days after
15 a candidate files an affidavit under section
16 511(a)(3), the Commission shall—
17 "(A) determine whether or not the can-
18 didate meets the requirements for certification
19 as a participating candidate under this title;
20 "(B) if the Commission determines that
21 the candidate meets such requirements, certify
22 the candidate as a participating candidate
23 under this title; and
24 "(C) notify the candidate of the Commis-
25 sion's determination.

1 "(2) DEEMED CERTIFICATION FOR ALL ELEC-
2 TIONS IN ELECTION CYCLE.—If the Commission cer-
3 tifies a candidate as a participating candidate under
4 this title with respect to the first election of the elec-
5 tion cycle involved, the Commissioner shall be
6 deemed to have certified the candidate as a partici-
7 pating candidate under this title with respect to all
8 subsequent elections of the election cycle.
9 "(b) REVOCATION OF CERTIFICATION.—
10 "(1) IN GENERAL.—The Commission may re-
11 voke a certification under subsection (a) if—
12 "(A) a candidate fails to qualify to appear
13 on the ballot at any time after the date of cer-
14 tification (other than a candidate certified as a
15 participating candidate with respect to a pri-
16 mary election who fails to qualify to appear on
17 the ballot for a subsequent election in that elec-
18 tion cycle); or
19 "(B) a candidate otherwise fails to comply
20 with the requirements of this title, including
21 any regulatory requirements prescribed by the
22 Commission.
23 "(2) REPAYMENT OF BENEFITS.—If certifi-
24 cation is revoked under paragraph (1), the candidate
25 shall repay to the Fair Elections Fund established

1 under section 531 an amount equal to the value of
2 benefits received under this title with respect to the
3 election cycle involved plus interest (at a rate deter-
4 mined by the Commission) on any such amount re-
5 ceived.

6 "Subtitle C—Requirements for Can-
7 didates Certified as Partici-
8 pating Candidates

9 **"SEC. 521. CONTRIBUTION AND EXPENDITURE REQUIRE-**
10 **MENTS.**

11 "(a) CONTRIBUTIONS.—

12 "(1) PERMITTED SOURCES OF CONTRIBU-
13 TIONS.—A candidate who is certified as a partici-
14 pating candidate under this title with respect to an
15 election shall, with respect to all elections occurring
16 during the election cycle for the office involved, ac-
17 cept no contributions from any source (including an
18 unexpended contribution received by the candidate
19 or an authorized committee of the candidate with re-
20 spect to a previous election, a contribution made by
21 any political committee or multicandidate political
22 committee, or a bundled contribution described in
23 section 304(i)) other than—

24 "(A) qualifying contributions described in
25 section 512;

1 "(B) qualified small dollar contributions
2 described in section 503;
3 "(C) allocations under section 502; and
4 "(D) payments under section 503.
5 "(2) CONTRIBUTIONS FOR LEADERSHIP AND
6 RELATED PACS.—A political committee of a partici-
7 pating candidate which is not an authorized com-
8 mittee of such candidate may accept contributions
9 other than contributions described in paragraph (1)
10 from any person if—
11 "(A) the aggregate amount of the con-
12 tributions from such person for any election
13 during the election cycle do not exceed $100;
14 and
15 "(B) no portion of such contributions is
16 disbursed in connection with the campaign of
17 the participating candidate.
18 "(3) EXCEPTION FOR CONTRIBUTIONS RE-
19 CEIVED PRIOR TO FILING OF STATEMENT OF IN-
20 TENT.—Notwithstanding paragraph (1), a candidate
21 who has accepted contributions that are not quali-
22 fied small dollar contributions, qualifying contribu-
23 tions, or contributions described in paragraph (2)
24 prior to the date the candidate files a statement of
25 intent under section 511(a)(1) is not in violation of

1 this subsection, but only if all such contributions
2 are—
3 "(A) returned to the contributor; or
4 "(B) submitted to the Commission for de-
5 posit in the Fair Elections Fund established
6 under section 531.
7 "(b) PERMITTED SOURCES FOR EXPENDITURES.—
8 "(1) IN GENERAL.—A candidate who is cer-
9 tified as a participating candidate under this title
10 with respect to an election shall, with respect to all
11 elections occurring during the election cycle for the
12 office involved—
13 "(A) make no expenditures from any
14 amounts other than—
15 "(i) qualifying contributions described
16 in section 512;
17 "(ii) qualified small dollar contribu-
18 tions described in section 503;
19 "(iii) allocations under section 502;
20 and
21 "(iv) payments under section 503; and
22 "(B) make no expenditures from personal
23 funds or the funds of any immediate family
24 member of the candidate (other than funds re-

1 ceived through qualified small dollar contribu-
2 tions and qualifying contributions).
3 "(2) IMMEDIATE FAMILY MEMBER DEFINED.—
4 In paragraph (1)(B), the term 'immediate family'
5 means, with respect to a candidate—
6 "(A) the candidate's spouse;
7 "(B) a child, stepchild, parent, grand-
8 parent, brother, half-brother, sister, or half-sis-
9 ter of the candidate or the candidate's spouse;
10 and
11 "(C) the spouse of any person described in
12 subparagraph (B).
13 "(3) EXCEPTION FOR EXPENDITURES MADE
14 PRIOR TO FILING OF STATEMENT OF INTENT.—Not-
15 withstanding paragraph (1), if a candidate has made
16 expenditures prior to the date the candidate files a
17 statement of intent under section 511(a)(1) which a
18 candidate who is certified as a participating can-
19 didate under this title is prohibited from making
20 under paragraph (1), the candidate is not in viola-
21 tion of this subsection, but only if the aggregate
22 amount of the prohibited expenditures made by the
23 candidate prior to that date is less than 20 percent
24 of the amount of the initial allocation to be made to
25 the candidate under section 502(a).

1 "(e) SPECIAL RULE FOR COORDINATED PARTY EX-
2 PENDITURES.—For purposes of this subsection, a pay-
3 ment made by a political party in coordination with a par-
4 ticipating candidate shall not be treated as a contribution
5 to or as an expenditure made by the participating can-
6 didate.

7 **"SEC. 522. DEBATE REQUIREMENT.**

8 "A candidate who is certified as a participating can-
9 didate under this title with respect to an election shall,
10 during the election cycle for the office involved, participate
11 in at least—

12 "(1) 1 public debate before the primary election
13 with other participating candidates and other willing
14 candidates from the same party and seeking the
15 same nomination as such candidate; and

16 "(2) 2 public debates before the general election
17 with other participating candidates and other willing
18 candidates seeking the same office as such can-
19 didate.

20 **"SEC. 523. REMITTING UNSPENT FUNDS AFTER ELECTION.**

21 "(a) IN GENERAL.—Not later than the date that is
22 45 days after the last election for which a candidate cer-
23 tified as a participating candidate under this title qualifies
24 to be on the ballot during the election cycle involved, such
25 participating candidate shall remit to the Commission for

1 deposit in the Fair Elections Fund established under sec-
2 tion 531 an amount equal to the lesser of—
3 "(1) the amount of money in the candidate's
4 campaign account; or
5 "(2) the sum of the allocations received by the
6 candidate under section 502 and the payments re-
7 ceived by the candidate under section 503.
8 "(b) EXCEPTION FOR EXPENDITURES INCURRED
9 BUT NOT PAID AS OF DATE OF REMITTANCE.—
10 "(1) IN GENERAL.—Subject to subparagraph
11 (B), a candidate may withhold from the amount re-
12 quired to be remitted under paragraph (1) the
13 amount of any authorized expenditures which were
14 incurred in connection with the candidate's cam-
15 paign but which remain unpaid as of the deadline
16 applicable to the candidate under paragraph (1), ex-
17 cept that any amount withheld pursuant to this
18 paragraph shall be remitted to the Commission not
19 later than 120 days after the date of the election to
20 which paragraph (1) applies.
21 "(2) DOCUMENTATION REQUIRED.—A can-
22 didate may withhold an amount of an expenditure
23 pursuant to subparagraph (A) only if the candidate
24 submits documentation of the expenditure and the

1 amount to the Commission not later than the dead-
2 line applicable to the candidate under paragraph (1).

3 "Subtitle D—Administrative
4 Provisions

5 **"SEC. 531. FAIR ELECTIONS FUND.**

6 "(a) ESTABLISHMENT.—There is established in the
7 Treasury a fund to be known as the 'Fair Elections Fund'.
8 "(b) AMOUNTS HELD BY FUND.—The Fund shall
9 consist of the following amounts:
10 "(1) APPROPRIATED AMOUNTS.—Amounts ap-
11 propriated to the Fund, including trust fund
12 amounts appropriated pursuant to applicable provi-
13 sions of the Internal Revenue Code of 1986.
14 "(2) VOLUNTARY CONTRIBUTIONS.—Voluntary
15 contributions to the Fund.
16 "(3) TRANSFERS RESULTING FROM PAYMENT
17 OF CIVIL PENALTIES.—Amounts transferred into the
18 Fund pursuant to section 309(a)(13).
19 "(4) OTHER DEPOSITS.—Amounts deposited
20 into the Fund under—
21 "(A) section 521(a)(3) (relating to excep-
22 tions to contribution requirements);
23 "(B) section 523 (relating to remittance of
24 allocations from the Fund);

1 "(C) section 534 (relating to violations);
2 and
3 "(D) any other section of this Act.
4 "(5) INVESTMENT RETURNS.—Interest on, and
5 the proceeds from, the sale or redemption of, any
6 obligations held by the Fund under subsection (c).
7 "(c) INVESTMENT.—The Commission shall invest
8 portions of the Fund in obligations of the United States
9 in the same manner as provided under section 9602(b)
10 of the Internal Revenue Code of 1986.
11 "(d) USE OF FUND.—
12 "(1) IN GENERAL.—The sums in the Fund
13 shall be used to provide benefits to participating
14 candidates as provided in subtitle A.
15 "(2) INSUFFICIENT AMOUNTS.—Under regula-
16 tions established by the Commission, rules similar to
17 the rules of section 9006(c) of the Internal Revenue
18 Code of 1986 shall apply.
19 **"SEC. 532. FAIR ELECTIONS OVERSIGHT BOARD.**
20 "(a) ESTABLISHMENT.—There is established within
21 the Federal Election Commission an entity to be known
22 as the 'Fair Elections Oversight Board'.
23 "(b) STRUCTURE AND MEMBERSHIP.—

1 "(1) IN GENERAL.—The Board shall be com-
2 posed of 5 members appointed by the President, of
3 whom—
4 "(A) 2 shall be appointed after consulta-
5 tion with the Majority Leader of the House of
6 Representatives;
7 "(B) 2 shall be appointed after consulta-
8 tion with the Minority Leader of the House of
9 Representatives; and
10 "(C) 1 shall be appointed upon the rec-
11 ommendation of the members appointed under
12 subparagraphs (A) and (B).
13 "(2) QUALIFICATIONS.—
14 "(A) IN GENERAL.—The members shall be
15 individuals who are nonpartisan and, by reason
16 of their education, experience, and attainments,
17 exceptionally qualified to perform the duties of
18 members of the Board.
19 "(B) PROHIBITION.—No member of the
20 Board may be—
21 "(i) an employee of the Federal gov-
22 ernment;
23 "(ii) a registered lobbyist; or
24 "(iii) an officer or employee of a polit-
25 ical party or political campaign.

1 "(3) DATE.—Members of the Board shall be
2 appointed not later than 60 days after the date of
3 the enactment of this Act.
4 "(4) TERMS.—A member of the Board shall be
5 appointed for a term of 5 years.
6 "(5) VACANCIES.—A vacancy on the Board
7 shall be filled not later than 30 calendar days after
8 the date on which the Board is given notice of the
9 vacancy, in the same manner as the original ap-
10 pointment. The individual appointed to fill the va-
11 cancy shall serve only for the unexpired portion of
12 the term for which the individual's predecessor was
13 appointed.
14 "(6) CHAIRPERSON.—The Board shall des-
15 ignate a Chairperson from among the members of
16 the Board.
17 "(e) DUTIES AND POWERS.—
18 "(1) ADMINISTRATION.—The Board shall have
19 such duties and powers as the Commission may pre-
20 scribe, including the power to administer the provi-
21 sions of this title.
22 "(2) REVIEW OF FAIR ELECTIONS FINANC-
23 ING.—
24 "(A) IN GENERAL.—After each regularly
25 scheduled general election for Federal office,

1 the Board shall conduct a comprehensive review
2 of the Fair Elections financing program under
3 this title, including—
4 "(i) the maximum dollar amount of
5 qualified small dollar contributions under
6 section 503(f);
7 "(ii) the maximum and minimum dol-
8 lar amounts for qualifying contributions
9 under section 512(d);
10 "(iii) the number and value of quali-
11 fying contributions a candidate is required
12 to obtain under section 512(a) to be eligi-
13 ble for certification as a participating can-
14 didate under this title;
15 "(iv) the amount of allocations that
16 candidates may receive under section 502;
17 "(v) the maximum amount of pay-
18 ments a candidate may receive under sec-
19 tion 503;
20 "(vi) the overall satisfaction of partici-
21 pating candidates and the American public
22 with the program; and
23 "(vii) such other matters relating to
24 financing of House of Representatives

1 campaigns as the Board determines are
2 appropriate.
3 "(B) CRITERIA FOR REVIEW.—In con-
4 ducting the review under subparagraph (A), the
5 Board shall consider the following:
6 "(i) QUALIFYING CONTRIBUTIONS
7 AND QUALIFIED SMALL DOLLAR CON-
8 TRIBUTIONS.—The Board shall consider
9 whether the number and dollar amount of
10 qualifying contributions required and max-
11 imum dollar amount for such qualifying
12 contributions and qualified small dollar
13 contributions strikes a balance regarding
14 the importance of voter involvement, the
15 need to assure adequate incentives for par-
16 ticipating, and fiscal responsibility, taking
17 into consideration the number of primary
18 and general election participating can-
19 didates, the electoral performance of those
20 candidates, program cost, and any other
21 information the Board determines is ap-
22 propriate.
23 "(ii) REVIEW OF PROGRAM BENE-
24 FITS.—The Board shall consider whether
25 the totality of the amount of funds allowed

1 to be raised by participating candidates
2 (including through qualifying contributions
3 and small dollar contributions), allocations
4 under section 502, and payments under
5 section 503 are sufficient for voters in each
6 State to learn about the candidates to cast
7 an informed vote, taking into account the
8 historic amount of spending by winning
9 candidates, media costs, primary election
10 dates, and any other information the
11 Board determines is appropriate.
12 "(C) ADJUSTMENT OF AMOUNTS.—
13 "(i) IN GENERAL.—Based on the re-
14 view conducted under subparagraph (A),
15 the Board shall provide for the adjust-
16 ments of the following amounts:
17 "(I) the maximum dollar amount
18 of qualified small dollar contributions
19 under section 503(f);
20 "(II) the maximum and min-
21 imum dollar amounts for qualifying
22 contributions under section 512(d);
23 "(III) the number and value of
24 qualifying contributions a candidate is
25 required to obtain under section

1 512(a) to be eligible for certification
2 as a participating candidate under
3 this title;
4 "(IV) the base amount for can-
5 didates under section 502(b); and
6 "(V) the maximum amount of
7 matching contributions a candidate
8 may receive under section 503(b).
9 "(ii) REGULATIONS.—The Commis-
10 sion shall promulgate regulations providing
11 for the adjustments made by the Board
12 under clause (i).
13 "(D) REPORT.—Not later than March 30
14 following any general election for Federal office,
15 the Board shall submit a report to Congress on
16 the review conducted under paragraph (1).
17 Such report shall contain a detailed statement
18 of the findings, conclusions, and recommenda-
19 tions of the Board based on such review.
20 "(d) MEETINGS AND HEARINGS.—
21 "(1) MEETINGS.—The Board may hold such
22 hearings, sit and act at such times and places, take
23 such testimony, and receive such evidence as the
24 Board considers advisable to carry out the purposes
25 of this Act.

1 "(2) QUORUM.—Three members of the Board
2 shall constitute a quorum for purposes of voting, but
3 a quorum is not required for members to meet and
4 hold hearings.
5 "(e) REPORTS.—Not later than March 30, 2011, and
6 every 2 years thereafter, the Board shall submit to the
7 Committee on House Administration of the House of Rep-
8 resentatives a report documenting, evaluating, and making
9 recommendations relating to the administrative implemen-
10 tation and enforcement of the provisions of this title.
11 "(f) ADMINISTRATION.—
12 "(1) COMPENSATION OF MEMBERS.—
13 "(A) IN GENERAL.—Each member, other
14 than the Chairperson, shall be paid at a rate
15 equal to the daily equivalent of the minimum
16 annual rate of basic pay prescribed for level IV
17 of the Executive Schedule under section 5315
18 of title 5, United States Code.
19 "(B) CHAIRPERSON.—The Chairperson
20 shall be paid at a rate equal to the daily equiva-
21 lent of the minimum annual rate of basic pay
22 prescribed for level III of the Executive Sched-
23 ule under section 5314 of title 5, United States
24 Code.
25 "(2) PERSONNEL.—

1 "(A) DIRECTOR.—The Board shall have a
2 staff headed by an Executive Director. The Ex-
3 ecutive Director shall be paid at a rate equiva-
4 lent to a rate established for the Senior Execu-
5 tive Service under section 5382 of title 5,
6 United States Code.
7 "(B) STAFF APPOINTMENT.—With the ap-
8 proval of the Chairperson, the Executive Direc-
9 tor may appoint such personnel as the Execu-
10 tive Director and the Board determines to be
11 appropriate.
12 "(C) EXPERTS AND CONSULTANTS.—With
13 the approval of the Chairperson, the Executive
14 Director may procure temporary and intermit-
15 tent services under section 3109(b) of title 5,
16 United States Code.
17 "(D) DETAIL OF GOVERNMENT EMPLOY-
18 EES.—Upon the request of the Chairperson, the
19 head of any Federal agency may detail, without
20 reimbursement, any of the personnel of such
21 agency to the Board to assist in carrying out
22 the duties of the Board. Any such detail shall
23 not interrupt or otherwise affect the civil service
24 status or privileges of the Federal employee.

1 "(E) OTHER RESOURCES.—The Board
2 shall have reasonable access to materials, re-
3 sources, statistical data, and other information
4 from the Library of Congress and other agen-
5 cies of the executive and legislative branches of
6 the Federal Government. The Chairperson of
7 the Board shall make requests for such access
8 in writing when necessary.
9 "(g) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as are nec-
11 essary to carry out the purposes of this subtitle.
12 **"SEC. 533. ADMINISTRATION BY COMMISSION.**
13 "The Commission shall prescribe regulations to carry
14 out the purposes of this title, including regulations—
15 "(1) to establish procedures for—
16 "(A) verifying the amount of valid quali-
17 fying contributions with respect to a candidate;
18 "(B) effectively and efficiently monitoring
19 and enforcing the limits on the raising of quali-
20 fied small dollar contributions;
21 "(C) effectively and efficiently monitoring
22 and enforcing the limits on the use of personal
23 funds by participating candidates; and
24 "(D) monitoring the use of allocations
25 from the Fair Elections Fund established under

1 section 531 and matching contributions under
2 this title through audits or other mechanisms;
3 and
4 "(2) regarding the conduct of debates in a man-
5 ner consistent with the best practices of States that
6 provide public financing for elections.

7 **"SEC. 534. VIOLATIONS AND PENALTIES.**

8 "(a) CIVIL PENALTY FOR VIOLATION OF CONTRIBU-
9 TION AND EXPENDITURE REQUIREMENTS.—If a can-
10 didate who has been certified as a participating candidate
11 under section 513(a) accepts a contribution or makes an
12 expenditure that is prohibited under section 521, the Com-
13 mission shall assess a civil penalty against the candidate
14 in an amount that is not more than 3 times the amount
15 of the contribution or expenditure. Any amounts collected
16 under this subsection shall be deposited into the Fair Elec-
17 tions Fund established under section 531.

18 "(b) REPAYMENT FOR IMPROPER USE OF FAIR
19 ELECTIONS FUND.—

20 "(1) IN GENERAL.—If the Commission deter-
21 mines that any benefit made available to a partici-
22 pating candidate under this title was not used as
23 provided for in this title or that a participating can-
24 didate has violated any of the dates for remission of
25 funds contained in this title, the Commission shall

1 so notify the candidate and the candidate shall pay
2 to the Fund an amount equal to—
3 "(A) the amount of benefits so used or not
4 remitted, as appropriate; and
5 "(B) interest on any such amounts (at a
6 rate determined by the Commission).
7 "(2) OTHER ACTION NOT PRECLUDED.—Any
8 action by the Commission in accordance with this
9 subsection shall not preclude enforcement pro-
10 ceedings by the Commission in accordance with sec-
11 tion 309(a), including a referral by the Commission
12 to the Attorney General in the case of an apparent
13 knowing and willful violation of this title.
14 **"SEC. 535. ELECTION CYCLE DEFINED.**
15 "In this title, the term 'election cycle' means, with
16 respect to an election for the office of Representative in,
17 or Delegate or Resident Commissioner to, the Congress,
18 the period beginning on the day after the date of the most
19 recent general election for that office (or, if the general
20 election resulted in a runoff election, the date of the runoff
21 election) and ending on the date of the next general elec-
22 tion for that office (or, if the general election resulted in
23 a runoff election, the date of the runoff election).".

1 **SEC. 402. TRANSFER OF PORTION OF CIVIL MONEY PEN-**
2 **ALTIES INTO FAIR ELECTIONS FUND.**

3 Section 309(a) of the Federal Election Campaign Act
4 of 1971 (2 U.S.C. 437g(a)) is amended by adding at the
5 end the following new paragraph:

6 "(13) Upon receipt in the General Fund of the Treas-
7 ury of any payment attributable to a civil money penalty
8 imposed under this subsection, there shall be transferred
9 to the Fair Elections Fund established under section 531
10 an amount equal to 50 percent of the amount of such pay-
11 ment.".

12 **SEC. 403. PROHIBITING USE OF CONTRIBUTIONS BY PAR-**
13 **TICIPATING CANDIDATES FOR PURPOSES**
14 **OTHER THAN CAMPAIGN FOR ELECTION.**

15 Section 313 of the Federal Election Campaign Act
16 of 1971 (2 U.S.C. 439a) is amended by adding at the end
17 the following new subsection:

18 "(d) RESTRICTIONS ON PERMITTED USES OF FUNDS
19 BY CANDIDATES RECEIVING FAIR ELECTIONS FINANC-
20 ING.—Notwithstanding paragraphs (2), (3), or (4) of sub-
21 section (a), if a candidate for election for the office of Rep-
22 resentative in, or Delegate or Resident Commissioner to,
23 the Congress is certified as a participating candidate
24 under title V with respect to the election, any contribution
25 which the candidate is permitted to accept under such title

1 may be used only for authorized expenditures in connec-
2 tion with the candidate's campaign for such office.".

3 **SEC. 404. PROHIBITION ON JOINT FUNDRAISING COMMIT-**
4 **TEES.**

5 Section 302(e) of the Federal Election Campaign Act
6 of 1971 (2 U.S.C. 432(e)) is amended by adding at the
7 end the following new paragraph:

8 "(6) No authorized committee of a candidate
9 may establish a joint fundraising committee with a
10 political committee other than an authorized com-
11 mittee of a candidate.".

12 **SEC. 405. LIMITATION ON COORDINATED EXPENDITURES**
13 **BY POLITICAL PARTY COMMITTEES WITH**
14 **PARTICIPATING CANDIDATES.**

15 (a) IN GENERAL.—Section 315(d)(3) of the Federal
16 Election Campaign Act of 1971 (2 U.S.C. 441a(d)) is
17 amended—

18 (1) by redesignating subparagraphs (A) and
19 (B) as subparagraphs (B) and (C), respectively; and

20 (2) by inserting before subparagraph (B), as re-
21 designated by paragraph (1), the following new sub-
22 paragraph:

23 "(A) in the case of a candidate for election
24 to the office of Representative in, or Delegate
25 or Resident Commissioner to, the Congress who

1 is certified as a participating candidate under
2 title V, the lesser of—
3 "(i) 10 percent of the allocation that
4 the participating candidate is eligible to re-
5 ceive for the general election under section
6 502(a); or
7 "(ii) the amount which would (but for
8 this subparagraph) apply with respect to
9 such candidate under subparagraph (B);".
10 (b) CONFORMING AMENDMENT.—Section 315(d)(3)
11 of such Act (2 U.S.C. 441a(d)(3)) is amended—
12 (1) in subparagraph (B) (as redesignated by
13 subsection (a)), by inserting "who is not certified as
14 a participating candidate under title V" after "only
15 one Representative"; and
16 (2) in subparagraph (C) (as redesignated by
17 subsection (a)), by inserting "who is not certified as
18 a participating candidate under title V" after "any
19 other State".

20 Subtitle B—Responsibilities of the
21 Federal Election Commission

22 **SEC. 411. PETITION FOR CERTIORARI.**

23 Section 307(a)(6) of the Federal Election Campaign
24 Act of 1971 (2 U.S.C. 437d(a)(6)) is amended by insert-

1 ing "(including a proceeding before the Supreme Court on
2 certiorari)" after "appeal".

3 **SEC. 412. FILING BY ALL CANDIDATES WITH COMMISSION.**

4 Section 302(g) of the Federal Election Campaign Act
5 of 1971 (2 U.S.C. 432(g)) is amended to read as follows:

6 "(g) FILING WITH THE COMMISSION.—All des-
7 ignations, statements, and reports required to be
8 filed under this Act shall be filed with the Commis-
9 sion.".

10 **SEC. 413. ELECTRONIC FILING OF FEC REPORTS.**

11 Section 304(a)(11) of the Federal Election Campaign
12 Act of 1971 (2 U.S.C. 434(a)(11)) is amended—

13 (1) in subparagraph (A), by striking "under
14 this Act—" and all that follows and inserting
15 "under this Act shall be required to maintain and
16 file such designation, statement, or report in elec-
17 tronic form accessible by computers.";

18 (2) in subparagraph (B), by striking "48
19 hours" and all that follows through "filed electroni-
20 cally)" and inserting "24 hours"; and

21 (3) by striking subparagraph (D).

1 **Subtitle C—Effective Date**

2 **SEC. 421. EFFECTIVE DATE.**

3 This title and the amendments made by this title
4 shall take effect on January 1, 2011.

Mr. CAPUANO. This amendment is an addition to the bill. And the truth is this bill, though I support it, disclosure is a good thing, transparency is a good thing, it really doesn't get to the heart of the matter. And the heart of the matter to me is the fact that so many of us have to spend so much time raising so much money that we leave all kinds of impressions with the public——

Mr. LUNGREN. Mr. Chairman, may I reserve the right to object on this?

The CHAIRMAN. Yes.

Mr. CAPUANO. We leave so many impressions with the public, I think it takes away time that we as Members can be using more valuably responding to constituents, learning bills, debating and discussing with each other.

It models on the Connecticut portion. This is a cut-and-paste from a bill filed by Mr. Larson. I believe it has over 100 cosponsors, including myself, that would provide public financing for certain qualified candidates. It is a minimum level. It is voluntary. It is not required. People can opt out of it anytime they want. They don't have to join in.

And it requires people—if they choose to join, it requires people to keep their contributions relatively low so they can do other things, and it matches contributions of $100 or less at a 4–to–1 ratio. It is not the perfect bill, in my estimation. I would like to play with this myself as we move forward.

Nonetheless, the concept of getting us off of the money mouse wheel is something that I would pretty much make almost any compromise I could to do. I know that some people measure their manhood or womanhood by how much money they can raise. I have no such self-illusions. I don't worry about those things. I am very comfortable with who and what I am. I never raised another nickel in my life for my own campaign.

So, Mr. Chairman, that is what this is. I think most members here know what this bill does. They know the concept. And therefore I don't think I have to take any additional time to explain it, except to state very clearly that unless we do this, we will constantly be on the money train; the public will always have suspicions about our motivations; and we will not be able to focus on the things that I think the founders of this country wanted us to focus on, and that was not raising money.

With that, Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The gentleman will state his point of order.

Mr. LUNGREN. I will withdraw my point of order, Mr. Chairman. I will just ask time to debate the amendment.

The CHAIRMAN. Yes. Any additional debate on the amendment? Mr. Lungren.

Mr. LUNGREN. Can the gentleman tell me what the cost of this would be?

Mr. CAPUANO. No way to tell until we have the number of people that are involved in it. It may cost nothing if no one opts in; but I will, so it is going to cost you something.

Mr. LUNGREN. Well, aren't we required to score bills when we come to the floor and find out how to pay for them?

Mr. CAPUANO. If you vote for this bill and it gets on the floor, we will get it scored before you vote on it.

Mr. LUNGREN. No, but is there any rough estimate of what the cost would be——

Mr. CAPUANO. I don't have it at my fingertips, no.

Mr. LUNGREN. What is the amount that each candidate could get?

Mr. CAPUANO. The totals, I believe, are in the 300- or $500,000 per general election range. That is at a maximum. It wouldn't necessarily be that.

Mr. LUNGREN. And this is public funding; correct?

Mr. CAPUANO. Yes.

Mr. LUNGREN. Is there a specific way to raise the funds in this bill?

Mr. CAPUANO. Not yet, but I am happy to work with you as we get closer.

Mr. LUNGREN. But the bill doesn't have a voluntary check-off or anything——

Mr. CAPUANO. No. Not yet. That portion would have to go to Ways and Means when we get there.

Mr. LUNGREN. And would it be limited—how does a candidate qualify?

Mr. CAPUANO. Qualified by, first of all, opting in; second of all, raising in $100-or-less increments up to $50,000, which is about 1,500 contributors. That is how you would qualify.

Mr. LUNGREN. So once you do that, you could tap into the program for as much as?

Mr. CAPUANO. It is about—I have got the exact numbers upstairs. It is actually, I think, $575,000. In that range.

Mr. LUNGREN. Would that be both primary and general, or just the general?

Mr. CAPUANO. That would be primary. I believe the total general is a few million dollars per candidate, which is exactly what you raised. Don't you wish you could raise that little amount of money, Mr. McCarthy?

Mr. LUNGREN. And who would administer the funds?

Mr. CAPUANO. I don't know. Who would administer these things? They set up a whole board on the whole thing.

The CHAIRMAN. Ms. Lofgren,

Ms. LOFGREN. Mr. Chairman, if I could just interject because points of order need to be timely made, and I did not make one because Mr. Lungren did; but if he is dropping that, I would like to be given the courtesy of raising a point of order.

The CHAIRMAN. Without objection, the gentlewoman is recognized.

Mr. LUNGREN. I still have time, my time?

The CHAIRMAN. Yes.

Mr. LUNGREN. So would a Member be prohibited from raising other moneys outside of that initial amount when they qualified——

Mr. CAPUANO. Once you opt in, yes.

Mr. LUNGREN. So your limit is how much?

Mr. CAPUANO. The limit is $100 or less contributions. No limit on that.

Mr. LUNGREN. Oh, so you can continue raising——

Mr. CAPUANO. Under those limits, yes. Good luck raising a lot of money on $100 or less.

Mr. LUNGREN. And that is unlimited and then you qualify for the public funds?

Mr. CAPUANO. Yes, I believe that is correct.

Mr. LUNGREN. Okay. I just want to make clear what this is. This is if you have an unlimited amount of funds under $100 that you raise; right?

Mr. CAPUANO. They are not matched.

Mr. LUNGREN. Pardon me?

Mr. CAPUANO. The match is capped.

Mr. LUNGREN. Right. The match is capped but there is no limit in the underlying amount under $100; right?

Mr. CAPUANO. I believe that is correct.

Mr. LUNGREN. So you could raise $2 million under $100 in contributions. I realize that is a lot. And then on top of that, you could get the public funding. If one party opts in—in the general election if the Democratic candidate opts in for that, does that put any limitations on the Republican candidate or vice versa?

Mr. CAPUANO. No. Nothing other than the current limits.

Mr. LUNGREN. Is it limited to—is the number of parties limited?

Mr. CAPUANO. No.

Mr. LUNGREN. So as long as you qualify under Federal and State law, you would then qualify for that?

Mr. CAPUANO. You would still have to raise a certain amount of money.

Mr. LUNGREN. I understand that——

Mr. CAPUANO. You have to raise $50,000 in $100 or less contributions, which is 1,500 contributors. And if you can do that and not be associated with any entity or group, good luck to you. Isn't that the American system? Anybody should be able to run?

Mr. LUNGREN. Okay. Let me ask you this. What about, I call it the LaRouche problem?

Mr. CAPUANO. How is it a problem? If they can go out and raise this kind of money——

Mr. LUNGREN. Have you met him?

Mr. CAPUANO. Yes, I met him.

Mr. LUNGREN. That is a problem.

Mr. CAPUANO. I don't see it as a problem at all. I actually think you have more problem with the Tea Party right now, not the LaRouches, but that is your problem. And my argument is——

Mr. LUNGREN. No. No. As I have said before, Mr. LaRouche is a Democrat and you are welcome to him.

Mr. CAPUANO. If somebody can raise this kind of money in these kinds of numbers, they are going to be on the ballot, and they should be on the ballot, and you should be concerned. And if they are LaRouches or Tea Parties or Whigs or anybody else, God bless them.

Mr. MCCARTHY. Will the gentleman yield?

Mr. LUNGREN. I would be happy to yield to the gentleman from California.

Mr. MCCARTHY. You stated earlier your concern that the money—money from outside the district. Does this put any restric-

tions if a person ran for office and got all the money from outside of the State?

Mr. CAPUANO. No.

The CHAIRMAN. I would like to recognize the gentlelady for a point of order.

Ms. LOFGREN. Mr. Lungren is not finished.

The CHAIRMAN. He is out of time so——

But I will let you——

Mr. LUNGREN. I will yield back my time.

Ms. LOFGREN. Thank you for hearing me on this point of order. I actually——

Mr. LUNGREN. Mr. Chairman, the point of order is not in order.

Mr. CAPUANO. Mr. Chairman, if the point of order is not in—I understand this bill is not germane and I respect that, and I am not going to put anybody in a position of having to play procedural games. I am more than happy to withdraw this amendment without embarrassing anybody or putting anybody in a difficult position. That is not my intention.

My intention was to make sure people understand that this bill, the DISCLOSE bill, is a good bill; but it is not going to solve the underlying problem. The only solution to this underlying problem is to get us off the money train. And the only way to do it, unless somebody has a better idea, is to get public financing of campaigns.

Mr. LUNGREN. Would the gentleman yield?

Mr. CAPUANO. I certainly would.

Mr. LUNGREN. I know the gentleman is going to withdraw that. I just ask the chairman, is this bill within our jurisdiction?

Mr. CAPUANO. No.

Mr. LUNGREN. The gentleman's bill? Not germane to this bill today, but is this within our jurisdiction?

The CHAIRMAN. Yes. It would come back under us, yes.

Ms. LOFGREN. Will the gentleman yield? If I could, I am a cosponsor of this bill. We had a hearing in the Election Subcommittee. For a variety of reasons, I don't think this is the best way to proceed with it. But I do appreciate that you are withdrawing it. I agree with it on the substance.

The CHAIRMAN. We already had a hearing on it in our committee.

I understand the gentleman withdraws his amendment?

Mr. CAPUANO. Yes, Mr. Chairman.

The CHAIRMAN. Any further amendments?

Mr. CAPUANO. Mr. Chairman, I have got another one.

The CHAIRMAN. Mr. Capuano is recognized.

Mr. CAPUANO. Mr. Chairman, amendment No. 2, the Shareholder Protection Act, and that bill is not within the jurisdiction of this committee.

Ms. LOFGREN. And I raise a point of order.

The CHAIRMAN. The lady is recognized for a point of order.

Mr. CAPUANO. This particular provision is a simple response, a direct and simple response to Citizens United, and, more importantly it protects shareholders.

The question always comes—and I have asked members of this panel and no one has debated it—who owns the money in a corporation? Who owns the corporation? The CEO of the corporation, the board of directors of the corporation, or the shareholders of the

corporation? I have not heard anybody yet who argues that shareholders do not own the corporation. So therefore the corporate money is their money.

And the Shareholder Protection bill simply says that if a corporation wants to exercise what the court says is the corporation's First Amendment rights, so be it; then the people whose money it is get to say yes or no. Shareholders get to say yes or no. Very simple, very straightforward, doesn't prohibit anybody's First Amendment rights, doesn't get involved in any of these other things. It is a relatively simple bill, a short bill.

No matter how you measure it, no matter how tightly it is printed or anything else, it is a short bill. And I think that it is a bill that will actually allow people to make their own decisions. The worst thing that can happen, I think in campaigns or anything else, is for anybody to spend my money for me; and if somebody wants to make a political contribution on my behalf, I should have a say in the matter if it is my money. And that is all this does. It says shareholders own the corporation and they get to say yes or no.

Mr. Chairman, I yield back the balance of my time.

Ms. LOFGREN. Mr. Chairman, may I be heard on my point of order?

The CHAIRMAN. Yes.

Ms. LOFGREN. I actually—as I mentioned, when we had hearing in the questions I asked, I think the situation of shareholders and their rights is a very serious one, and I am very interested in Mr. Capuano's proposal. I also am interested in liability issues and the like. However, it is not germane to the underlying bill.

Mr. Capuano is a member of the Financial Services Committee. I am a member of the Judiciary Committee. I hope that we can pursue some of these other ideas in those committees of jurisdiction, but I don't think this amendment is germane to the underlying bill and therefore——

Mr. CAPUANO. Mr. Chairman, if the gentlelady will yield. Again, without trying to put anybody in a box, and also I have been told that we are going to be marking this bill up in the not-too-distant future in Financial Services. Anyway, I just wanted to raise the point. To me I think it is a critical part of this whole debate. Disclosure is fine, but if somebody is spending somebody else's money, it is never good.

So with that, Mr. Chairman, with due respect I will withdraw my amendment.

The CHAIRMAN. I thank the gentleman.

Mr. MCCARTHY. Can I ask you a question before you withdraw?

Mr. CAPUANO. Sure.

Mr. MCCARTHY. Just a couple. Would the shareholders vote on spending a certain dollar amount throughout, or would they have to vote by each contribution?

Mr. CAPUANO. The bill that we have proposed in Financial Services would be one time per year the shareholders would vote yes or no on a given amount suggested by the board, like everything else. So the board would come out and say, We ask you to allow us to spend up to 10 million—pick a number—whatever the number is——

Mr. MCCARTHY. And they can do whatever they want——

Mr. CAPUANO. Whatever they want. And the shareholders have an up-or-down vote on it.

Mr. MCCARTHY. Because it is the shareholders' money.

Mr. CAPUANO. Yes.

Mr. MCCARTHY. Okay. Taking that same premise, so if a shareholder disagrees with how the corporation spends the money, you could do one of two things, right? You could fight internally or you could sell the share.

Mr. CAPUANO. That is right.

Mr. MCCARTHY. So, say I am a union employee.

Mr. CAPUANO. Gee, what a surprise.

Mr. MCCARTHY. No, I am just—level playing field. And they take my money. Is there anything in your bill that has the union vote one time a year to decide how much is spent on political endeavors?

Mr. CAPUANO. Just as a point of information. The gentleman should read a whole bunch of cases, starting with Communication Workers of America versus Beck and other related cases back to the 1960s. The United States Supreme Court has itself said repeatedly that union members can opt out of political use of their donations, their union dues. It is not a new concept. It has been around for a long time. It has gone to the Supreme Court numerous times and has been upheld numerous times. So union members already have that option to not have their dues used for political purposes.

Mr. MCCARTHY. So that is the equivalent of selling the share; would it not be?

Mr. CAPUANO. I don't think so.

Mr. MCCARTHY. Not in your interpretation?

Mr. CAPUANO. No. I don't think so, no.

Mr. MCCARTHY. You are saying they can opt out.

Mr. CAPUANO. You are still related to the union. You are still getting benefits of the union. You don't have to leave the union. Even if you do leave the union, you still get the benefits of that. You still have to pay an agency, which has been long settled Supreme Court decisions, which I know that some people don't agree with, just like some of the decisions of the Supreme Court I don't agree with.

Mr. MCCARTHY. Let me ask you this question. When I asked you earlier that it was the shareholders' money, right?

Mr. CAPUANO. Yes.

Mr. MCCARTHY. And that is the premise of why you ask that the shareholders be able to vote?

Mr. CAPUANO. That is right.

Mr. MCCARTHY. Is the money that the union contributes, is that not their money?

Mr. CAPUANO. Yes. It is the union members' money for political purposes; that is correct.

Mr. MCCARTHY. The same thing as the taxpayers' money—for the shareholders' money, I am sorry. So if the shareholder gets the power to say, I only want you to spend this much on politics, because you are not asking for an individual, who to contribute it to, you are just asking how much to spend, why wouldn't we empower that union member to be able to have that same say of how much to be spent in politics?

Mr. CAPUANO. The union member does it in reverse. They are allowed to do it in reverse to a total. The union member is not allowed to say—under current law, the member is not allowed to say, I don't want to contribute to Mike Capuano, but I want to contribute to Kevin McCarthy with my union dues. They say either I am happy to go and be part of the union and allow the union in the normal course of business to make a decision, just like the shareholder would be doing. The shareholder would not be making a decision on individual contributions. They simply say yes or no on that.

Union members are already entitled to do the exact same thing. It is yes, we are in, or no, we are out on political activity, and that has been the case since the 1960s.

Ms. LOFGREN. Would the gentleman yield?

Mr. CAPUANO. I certainly would.

Mr. MCCARTHY. Just to clarify, it is my time.

Ms. LOFGREN. Oh, I am sorry. Will the gentleman yield?

The CHAIRMAN. Just to clarify, everybody has been out of time.

Mr. CAPUANO. Mr. Chairman, out of respect for some of the needs of my colleagues on this panel, I would respectfully withdraw my amendment.

The CHAIRMAN. You are withdrawing the amendment for the second time. Thank you. I appreciate it.

Are there any further amendments?

Mr. CAPUANO. Mr. Chairman, I have one more. Amendment No. 4.

[The information follows:]

AMENDMENT TO H.R. 5175
OFFERED BY MR. CAPUANO

Page 62, line 12, strike "is transmitted through television and".

Page 71, line 19, insert after "5 persons" the following: "(or, in the case of a communication transmitted through radio, the 2 persons)".

Page 72, line 2, insert after "5 persons" the following: "(or, in the case of a communication transmitted through radio, the 2 persons)".

The CHAIRMAN. Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, this is a simple approach. If we are going to disclose things on TV ads and other ads, I think we should be doing them on radio ads. And in an attempt to address some of the concerns that were raised, I think legitimate concerns that were raised, not trying to take up too much time of a given ad, actually reduce the number of people that would have to be identified on an ad to two; not five, not 42 different CEOs and the like. Simply the top two funders of the entity putting the ad there. And, again, it is an attempt to be reasonable. Radio ads are shorter. Speech takes longer than print. And that is what this amendment does. And with that, I——

The CHAIRMAN. I thank the gentleman. Is there any additional debate on the amendment to the substitute?

Mr. Lungren.

Mr. LUNGREN. Thank you very much.

As I understand, is this a new requirement for identification on radio ads?

Mr. CAPUANO. The current bill does not address radio ads.

Mr. LUNGREN. So this would then include radio ads as well as TV ads?

Mr. CAPUANO. TV ads are already covered with the top five——

Mr. LUNGREN. No, that is what I mean. As well as TV ads. Okay. So you would require the top funder, the top two funders?

Mr. CAPUANO. Two funders, correct.

Mr. LUNGREN. Now, what about the question of the time involved? I thought the chairman said with respect to his manager's amendment that somehow there is a variance that is allowed if it would be too much time out of a radio ad.

Mr. CAPUANO. It would be subject to the same allowance. I don't see how two names would really interfere with a 30-second ad, but if it did, the FEC would be allowed to waive it, just like they would under the current bill for TV ads.

Mr. LUNGREN. Okay. Thank you.

The CHAIRMAN. Any additional debate on the amendment? Hearing none, the question is on the amendment.

All those in favor, signify by saying aye.

Those opposed, no.

In the opinion of the Chair, the ayes have it.

Mr. CAPUANO. Mr. Chairman, just as a point of information, I would like it noted that I got one amendment passed and Mr. McCarthy got two.

The CHAIRMAN. Noted for the record.

Mr. MCCARTHY. But the record also shows he said he was going to work on my other amendment on the floor, too.

Mr. CAPUANO. I was kidding.

The CHAIRMAN. It is agreed to.

Mr. LUNGREN. Mr. Chairman, since I have had no amendments adopted, I have one more amendment.

The CHAIRMAN. Taking another shot. The gentleman is recognized.

[The information follows:]

Amendment #4

AMENDMENT TO H.R. 5175

OFFERED BY M__. _____

Amend section 102 to read as follows (and conform the table of contents accordingly):

1 **SEC. 102. RESTRICTIONS ON INVOLVEMENT OF FOREIGN**
2 **NATIONALS IN ELECTIONS.**
3 (a) PROHIBITING PARTICIPATION BY FOREIGN NA-
4 TIONALS IN DECISIONS INVOLVING ELECTION-RELATED
5 ACTIVITIES.—
6 (1) IN GENERAL.—Section 319(a) of the Fed-
7 eral Election Campaign Act of 1971 (2 U.S.C.
8 441e(a)) is amended—
9 (A) by striking "or" at the end of para-
10 graph (1);
11 (B) by striking the period at the end of
12 paragraph (2) and inserting "; or"; and
13 (C) by adding at the end the following new
14 paragraph:
15 "(3) a foreign national to direct, dictate, con-
16 trol, or directly or indirectly participate in the deci-
17 sion-making process of any person, including a cor-
18 poration, labor organization, political committee, or
19 political organization, with regard to such person's

1 Federal or non-Federal election-related activities, in-
2 cluding decisions concerning the making of contribu-
3 tions, donations, expenditures, or disbursements in
4 connection with elections for any Federal, State, or
5 local office or decisions concerning the administra-
6 tion of a political committee.".
7 (2) EFFECTIVE DATE.—The amendment made
8 by paragraph (1) shall take effect on the date of the
9 enactment of this Act.
10 (b) CLARIFICATION OF TREATMENT OF STATE-
11 OWNED COMPANIES AS FOREIGN NATIONALS.—Section
12 319(b)(1) of such Act (2 U.S.C. 441e(b)(1)) is amended
13 by striking "except that" and inserting the following: "in-
14 cluding any partnership, association, corporation, organi-
15 zation, or other combination of persons for which 50 per-
16 cent or more of the ownership interest is held by a govern-
17 ment of a foreign country or a foreign political party, ex-
18 cept that".

Mr. LUNGREN. What I did with this amendment is—this is similar to amendment No. 4 that I had before, where I talked about the fact that I wanted to use the FEC regulatory language in statutory form so that we would be less confused about dealing with the problem of American subsidiaries of foreign companies.

It was pointed out by Mr. Capuano that I had added something with respect to the clarification of treatment of state-owned companies by foreign nationals, and that was in fact not part of the FEC language.

So what I have done is I have removed that from my amendment, so that in essence this amendment—which I have not asked for a recorded vote for before, and, to my chagrin, Mr. Capuano said I should have—I have now offered without the language that I think he questioned, or some on your side objected to, because it was further than what the FEC language was and there was some question about that would be adding some vagueness.

So, again, this amendment replaces section 102 with a prohibition on any foreign national directing or controlling political activity by codifying current FEC regulations, and I withdrew my expanded definition of "foreign national" that some on your side objected to.

The CHAIRMAN. I thank the gentleman.

Is there any additional debate on the amendment?

Mr. Capuano.

Mr. CAPUANO. Mr. Chairman, I respect the gentleman's attempt, but he cut off the part that I liked. I liked the 50 percent part, the part that you cut out. So I am happy to vote against this thing.

The CHAIRMAN. A part is really like a little section of something.

Any additional debate on the amendment to the substitute?

Ms. LOFGREN. Mr. Chairman, if I may just say, this is—I am not sure and I am not—because it has been redrafted, it has just been handed—I really think we ought to study this between now and the floor and see—I am taking a look at the section of law, and I want to think about how it works. I am not necessarily assuming that it is not a good idea. I just don't know yet. I just wanted to say that.

Mr. LUNGREN. It is difficult—I put something in there that Mr. Capuano suggested, and I heard a complaint that that was not the FEC language. So I took it out, and now I have complaints on the other side. But I will think about it and work with the other side to see if we might be able to resolve this one. Thank you.

The CHAIRMAN. No more debate?

Mr. LUNGREN. Mr. Chairman, could I ask unanimous consent to enter into the record a letter by eight former commissioners of the FEC where they detail a number of grave concerns they have regarding the legislation before us?

The CHAIRMAN. Without objection.

[The information follows:]

May 19, 2010

Committee on House Administration
1309 Longworth Building
Washington, DC 20515

Chairman Robert Brady, Ranking Member Dan Lungren and other Members of Congress:

We are former members of the Federal Election Commission. Collectively, we have nearly 75 years of service on the Commission, and at least one of us was on the Commission at all times from the Commission's inception in April of 1975 through July of 2008. We write to express our views on the so-called "DISCLOSE Act" ("Democracy is Strengthened by Casting Light on Speech in Elections"), recently introduced as H.R. 5175 and S. 3295. In summary, the DISCLOSE Act is unnecessary, largely duplicative of existing requirements, burdensome, and raises serious constitutional issues that will make enforcement difficult.

DISCLOSE has been variously described as an effort to "fix," "address," or "reduce the impact" of the Supreme Court's decision in *Citizens United v. Federal Election Commission.* We filed an *amicus* brief with the Supreme Court in *Citizens United* on the side of the petitioners. In that brief, which was cited twice in the majority opinion of the Court, we noted that over the years the law has become exceedingly complex, to the point where the FEC now has differing regulations for 33 types of contributions and speech and 71 different types of speakers. We noted that regardless of the abstract merit of the various arguments for and against limits on political contributions and spending, this very complexity raises serious concerns about whether the law can be enforced consistent with the First Amendment. We noted that the law's regulatory burdens often fall hardest not on large scale players in the political world, but on spontaneous grassroots movements; upstart, low-budget campaigns; and unwitting volunteers.

DISCLOSE exacerbates many of those same problems. Its disclosure provisions are unnecessary—duplicating information that is readily available to the public or providing information of extremely low informational value at a significant cost in terms of complexity and lack of clarity, especially for grassroots political speech. Its other provisions also significantly increase the complexity of the law for little or no gain. Additionally, we are concerned that DISCLOSE threatens to upend Congress's longstanding tradition of treating corporations and unions in parallel fashion, with similar burdens on each. One of the most significant issues in campaign finance, which the FEC must constantly fight to overcome, is the perception by many that the law is merely a partisan weapon wielded by the dominant political interests. Failure to maintain that even-handed approach towards unions and corporations threatens public confidence in the integrity of the electoral system. Each of these objections is intertwined with serious concerns about the effects of DISCLOSE on constitutionally-protected speech, effects which often cannot be appreciated without understanding the practical realities of enforcement.

The debate, as we have witnessed it since the introduction of DISCLOSE in late April, has revolved around whether "disclosure" is beneficial. We believe that that is not the issue: we

are part of the broad, bipartisan consensus that believes that disclosure requirements can benefit the political process. Rather, the question is whether the particular disclosure proposals included in DISCLOSE, as well as other provisions of the bill, are beneficial. We conclude, based on experience in enforcing federal campaign finance laws, that they are not. Unfortunately, the debate has gone on with relatively little attention paid to the actual, current state of the law or to the particular proposals included in the DISCLOSE legislation. We submit these comments in the hope that they will be useful to Congress in considering the actual impact of the law and how it would be enforced.

1) DISCLOSE Abandons Congress's Longstanding Policy of Equal Treatment for Corporations and Unions.

The first federal law specifically restricting corporate political participation was the Tillman Act of 1907, which prohibited some corporations from contributing directly to federal campaigns. Some version of the Tillman Act has been included in federal law ever since. At the time the Tillman Act was passed, the union movement was in its infancy and unions were not important political players. However, with the passage of the National Labor Relations Act in 1935 and the ensuing, rapid growth of unionism, Congress quickly concluded that the reasons for regulating and limiting corporate participation in politics also applied to unions. In 1943, Congress for the first time applied the ban on contributions to Federal campaigns to unions. In 1947, Congress extended the ban to include not only contributions, but also independent expenditures, and again included both corporations and unions in the expanded ban. Every federal campaign finance law since then —the Federal Election Campaign Act of 1971, the FECA Amendments of 1974, 1976, and 1979, and the Bipartisan Campaign Reform Act of 2002 ("McCain-Feingold" or "Shays-Meehan") —maintained this even handed approach to unions and corporations. It is this prohibition on corporate and union independent expenditures (but not contributions) that was overturned by the Supreme Court in *Citizens United.* While *Citizens United* was itself a corporation, there is no dispute that the decision also freed unions to engage in independent expenditures (i.e. independent political speech and advocacy).

The even-handed approach to corporations and unions cuts across all areas of the law. Both types of entities may operate and pay operating expenses for a Political Action Committee ("PAC"), and such PACs are subject to identical contribution and donation limits and reporting. Corporate and union independent expenditures and electioneering communications are subject to identical disclaimer requirements. Under existing law governing reporting of independent expenditures, corporations and unions will now face identical reporting requirements if and when they make independent expenditures. Laws regarding PAC solicitations and operations are, to the extent possible given the natures of corporations and unions, based on mirror images of one another. DISCLOSE abandons this traditional approach in two very important areas.

First, DISCLOSE would prohibit any corporation with a federal contract of $50,000 or more from making independent expenditures or electioneering communications. No such prohibition is applied to unions. The $50,000 trigger is extremely low, and would literally exclude thousands of corporations from making expenditures that are, under *Citizens United,* constitutionally-protected political speech at the core of the First Amendment.

If the concern is the possibility of corruption, or its appearance, this exemption of unions makes little sense. Opinion polls have usually shown less public confidence in union leaders than in business leaders. Although in recent years more Americans have identified "big business" than "big labor" as a "threat" to the country in Gallup polls, from 1965 through 1985, "big labor" was consistently rated as a "threat" by more Americans than was "big business."[1] Polling in many states continues to show that spending in elections by unions is viewed with greater suspicion than is spending by corporations. A recent Pew survey found that 61 percent of Americans thought that organized labor was "too powerful."[2]

In particular, public employee unions negotiate directly with the government for contracts many, many times the value of corporate contracts that DISCLOSE would use to trigger a ban on corporate independent expenditures. Additionally, private sector unions have a substantial interest in steering government contracts to unionized firms, or in having government pass laws that require or give an advantage to unionized firms in the bidding process. Similarly, DISCLOSE bans expenditures by corporations that have received TARP money, but allows unions at those companies to continue to make expenditures—even when the unions have an equitable stake in the company, and even though the ability to steer TARP funds to a unionized company or industry can be a tremendous advantage for the union.

If the reason for this ban on government contractors is the possibility of corruption and the appearance of corruption when a contractor who receives government funding is also making political expenditures, then it is obvious that such corruption or appearance of corruption must exist with any other recipient of federal funds. Yet many advocacy organizations receive government grants and earmarks (as opposed to "contracts") but are not covered by the provision at all.[3] In fact, most of these grants and earmarks have a value to the recipient far in excess of the value of a $50,000 contract to a for-profit corporation, which would typically earn the contractor a profit of five to eight percent, or $2,500 to $4,000. Yet recipients of grants and earmarks will be free to make unlimited political expenditures. Thus DISCLOSE gives the appearance of being less concerned with preventing corruption or its appearance than with disadvantaging a certain category of speaker: for-profit corporations.

DISCLOSE also includes a new ban on expenditures by American corporations that have more than 20 percent foreign ownership. While we discuss the merits of this proposed ban below, here we note only that no parallel provision exists for unions. Many unions, such as the Service Employees International Union and the International Brotherhood of Electrical Workers, have substantial foreign membership. Many, such as IBEW, also have foreign nationals as directors.

DISCLOSE states in its legislative findings that, "[t]he public's confidence in government is undermined when corporations that make significant expenditures during Federal election campaigns later receive government funds," but offers no reason why that same logic

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[1] Herbert Asher, American Labor Unions in the Electoral Arena, p. 17-18 (2001)

[2] *See* Pew Charitable Trust, *Independents Take Center Stage in Obama Era,* Part III, May 21, 2009 (available at http://people-press.org/report/?pageid=1518)

[3] Grants have not been considered "government contracts" for FECA purposes. *See* Federal Election Commission Advisory Opinion 1993-12 (Mississippi Band of Choctaw Indians, Sep. 17, 1993).

would not apply to unions.[4] Similarly, the bill would have Congress declare that it "has an interest in minimizing foreign intervention, and the perception of foreign intervention, in American elections," yet offers no reason why large scale "intervention" by international unions is less threatening than spending by corporations.

Our experience as administrators of federal campaign finance law is that a large percentage of Americans are suspicious of the law as little more than a tool for partisan interests. During periods of Republican congressional majorities, the suspicion grows among Democrats; during periods of Democratic majorities, among Republicans. Any perception of legitimacy of the law in this area is based on the assumption that the law is an even-handed attempt to control the allegedly improper or unsettling influence of money in politics. This is the reason, for example, that the FEC itself was designed so that a majority of Commission seats cannot be held by members of one political party. DISCLOSE's abandonment of the historic parallel treatment of unions and corporations is likely to increase public skepticism about government and the democratic legitimacy of laws governing money in politics. Little explanation has been offered as to why DISCLOSE abandons this long-standing, even-handed approach to the law.

2) Many of DISCLOSE'S Provisions Replicate Current Law, and So Play no Meaningful Role in Combating Corruption or its Appearance, Burden Constitutionally Protected Speech, and Increase the Complexity of the Law for Little or No Gain.

Although DISCLOSE is presented as necessary to close "loopholes" in the law opened by *Citizens United*, in fact many of its provisions are merely duplicative of current provisions of law. They thus add a new layer of complexity and burden constitutionally-protected political speech for little or no gain.

a) Provisions Governing U.S. Subsidiaries of Foreign Companies
(Title I)

Existing law already prohibits foreign nationals from participating in U.S. elections. In fact, this prohibition is significantly broader than the ban on corporate expenditures struck down in *Citizens United*, as it applies not only to federal elections but to state and local elections as well (2 U.S.C. § 441e). The definition of "foreign national" includes any "partnership, association, corporation, organization, or other combination of persons" that is either organized or incorporated outside the United States or that has its principal place of business outside the United States. Thus, contrary to various statements made by the President and others, foreign corporations are already prohibited from spending general treasury funds in U.S. elections.

More precisely then, DISCLOSE seeks to prohibit expenditures not by "foreign corporations," which are already prohibited even after *Citizens United*, but rather by U.S. incorporated and headquartered companies with some element of foreign ownership. However, even here, current FEC regulations already require that if a U.S. subsidiary of a foreign

[4] We are not sure how Congress has been able to make this finding, given that prior to *Citizens United* corporate expenditures in elections were banned since 1947.

corporation engages in spending, either from its general treasury funds[5] or through a state or federal PAC, all decisions about political spending must be made by American citizens, with *no* foreign nationals eligible to participate in the decision making, either directly or indirectly [11 C.F.R. 110.20 (i)]. Finally, the FEC has long required U.S. subsidiaries of foreign companies to make expenditures from U.S. earnings— that is, it is already illegal for a foreign corporation or owner to simply place cash into a U.S. subsidiary and then have the subsidiary spend that money in U.S. elections.[6] It may be that Congress would wish to codify these FEC regulations in the statute, but no one should be deceived into thinking that *Citizens United* must be "fixed" to prevent foreign corporations from influencing U.S. elections.

What the sponsors of DISCLOSE are attempting is to prohibit American owners of American companies with as little as 20 percent foreign ownership from exercising their First Amendment rights otherwise guaranteed by *Citizens United.* There are a number of problems with this approach.

DISCLOSE bans any company with 20 percent or more foreign ownership, or on which a majority of the board consists of foreign nationals, or in which any one foreign national plays a role in the corporation's decisions on political spending, from spending money in elections. (The last of these requirements, of course, is merely duplicative of current FEC regulations.) The bill would require the CEO of every company that seeks to make expenditures to file a certificate of compliance, under the threat of criminal penalties, prior to making political expenditures.

Under one possible interpretation, this means that any time aggregate foreign ownership tops 20 percent, the corporation would be prohibited from making independent expenditures. This reading of the bill would yield an enforcement nightmare. First, it provides no guidance as to how or when the 20 percent ownership threshold would be determined. As a practical matter, a publicly traded company can pass back and forth over the 20 percent ownership threshold several times in a day, let alone in between the time a decision is made to speak out, the air time is purchased, orders made and the material produced, and the speech is publicly disseminated. Furthermore, it is often all but impossible to immediately determine, at the end of any given day, the total foreign ownership of a corporation. Thus for companies near the 20 percent threshold, the provision would either be meaningless (there will be a fixed date for the certification: the company could well have over twenty percent ownership at the time the speech airs, but not when the decision to speak is made, or vice versa), or there would essentially be an outright prohibition, as a CEO would face jail time for making the necessary certification only to have circumstances change in the interim. It will often not even be possible for the CEO of a publicly traded company to know the percentage of foreign ownership at the time the certification is signed and the disbursement is authorized.

An alternative interpretation of the bill, however, is that the restriction would apply only if a single foreign national held a 20 percent or greater stake in the company. If the goal is to limit foreign influence, this would lead to some odd results, indeed. For example, a U.S. corporation in which a German company holds a 25 percent stake would be prohibited from

[5] Prior to *Citizens United,* 28 states permitted corporations to make independent expenditures in state and local political races; in 26 states, these expenditures were unlimited.
[6] Federal Election Commission MUR 4909, J&M International, Inc. (2001), and 11 C.F.R. 110.6

making expenditures, even if, in turn, the minority stake German company is 50 percent owned by a U.S. corporation. Meanwhile, a U.S. corporation 100 percent owned by a consortium of 6 Japanese companies, each with an equal stake, would be free to make independent expenditures, as no one foreign national would control more than 20 percent. In short, in a modern global economy, the 20 percent standard is functionally meaningless for the purpose for which the bill seeks to put it to use.

Adding to the enforcement woes, the bill prohibits spending by a corporation in which the foreign ownership is "indirect" as well as direct. Imagine, for example, that a U.S. corporation purchases a 25 percent share in another U.S. corporation, but that the purchaser is itself 25 percent owned by a foreign national. Are both companies prohibited from making expenditures, or only the purchasing company? These types of cases will never be easy to enforce, but some coherent definition might be worked out in the rulemaking process. DISCLOSE, however, provides no opportunity for the rulemaking process to work, taking effect thirty days after passage.

Beyond these issues, the provision raises serious constitutional concerns. First, it shuts off the speech of majority U.S. shareholders in a corporation. For example, Verizon Wireless, a Delaware corporation headquartered in New Jersey with 83,000 U.S. employees and 91 million U.S. customers, would be silenced because of Vodafone's minority ownership in the corporation. Competing telecommunications companies, however, would be able to spend money to influence elections. It is doubtful that Congress could justify such a distinction as necessary to prevent "corruption or its appearance," the constitutional touchstone for limitations on campaign spending and contributions.[7]

Second, discrimination on the basis of national origin is prohibited by the U.S. Constitution. Yet DISCLOSE not only limits the speech rights of persons on the basis of their national origin, it limits the speech rights of American citizens merely because they *associate* with foreign nationals. This is a remarkable assertion of government power that has little to do with preventing corruption of the political process, and raises constitutional concerns of equal protection as well as freedom of speech and association.

b) New Reporting Provisions
(Title II)

The bill imposes substantial new and unnecessary disclosure burdens. Disclosure requirements already present in the law are sufficient to inform the public about who is speaking about candidates in elections. The bill also significantly intrudes on the relationship between

[7] It is uncontested that foreign corporations have a right to lobby the U.S. government, and that U.S. subsidiaries of foreign corporations have long had the right—as with U.S. corporations—to organize PACs for the purpose of political spending and contributions (subject, of course, to the regulatory restriction that foreign nationals play no role in decision making of the PAC). Thus, Congress is on very thin ice in asserting that the new regulation is necessary to prevent some type of unique foreign corruption of the U.S. government. Indeed, 100 percent foreign owned U.S. subsidiaries have been able to make expenditures in state races in 28 states even before *Citizens United,* with no evidence of foreign corruption of the political process in those states.

organizations and donors, and requires each to be skilled at reading the mind of the other in order to determine intent.

2 U.S.C. § 434(c) already requires that groups, individuals, businesses, and unions report independent expenditures greater than $250. This includes the name of the spender, the date on which spending occurred, the amount spent, the candidate who benefits from the independent expenditure, the purpose of the expenditure, a statement certifying the expenditure was made without coordination between the party authorizing the communication and the candidate whom it promotes, and the identity of any person or entity contributing more than $200 for the expenditure.

Similarly, 2 U.S.C. § 434(f) requires spenders to report "electioneering communications" when they exceed $1,000. This mandates that the identity of the spender, any person sharing or exercising direction or control over the activities of such person, the custodian of the books and accounts of the spender, the principal place of business of the spender (if not an individual), each amount exceeding $200 that is disbursed, the person to whom the expenditure was made and the election to which the communication pertains be disclosed. Contributions made by individuals that exceed $1,000 are disclosed, accompanied by the individual's name and address.

Furthermore, current law requires any 527 organization that is not registered with the FEC as a "political committee" to disclose all of its donors to the IRS. And any organization that receives contributions or makes expenditures in excess of $1,000, and has as its "major purpose" influencing elections, must register with the Federal Election Commission as a "political committee," subjecting all of its activities to public disclosure and regulation.

Proponents of DISCLOSE have failed to explain why these existing disclosure provisions are insufficient to meet any state or public interest in knowing the sources of funds. Instead, DISCLOSE would create new reporting obligations on non-profit advocacy groups in addition to those already in existing law. In particular, the bill would require disclosure of personal information for any person who donates in excess of $1,000 to the organization, for whatever purpose, unless the donor specifically certifies in writing at the time the donation is made (later is too late) that the funds may not be used for "campaign-related activity," *and* receives in return a written certification from the organization's Chief Financial Officer, under the threat of criminal sanctions, that the funds will not be so used. Note here, among other things, that the ability of the donor to shield his name is contingent on the compliance by the recipient organization, something over which the donor has no control.

In this, DISCLOSE infringes on the First Amendment rights of private association recognized by the Supreme Court in *NAACP v. Alabama,* 357 U.S. 449 (1958), by threatening to disclose all donors to a group regardless of whether the donors intended to have their donation used for independent expenditures or for the group's other purposes. Any donors who do not know in advance that they must specifically and in writing request that their donations not be used for political purposes, and who give at least $1,000 or $10,000 (depending on the type of communication), will be disclosed under the requirements of this bill. Such information gives political parties and officeholders powerful information to bully advocacy groups and intimidate individuals into supporting their endangered candidates and agenda.

The bill imposes similarly draconian disclosure burdens on donations made from one organization to another, including those not made with the intent of supporting independent expenditures. This provision is made worse by requirements that the donation be disclosed within 24 hours by the donor as an independent expenditure, even if the donor or the recipient has no knowledge of whether the donation will be used to support independent expenditures. Here, rather than increase public knowledge, the added disclosure may merely serve to confuse the public—organizations will be required to report within 24 hours that their contributions were used for independent expenditures, when in fact they may never be so used.

This provision applies not only if the donation was solicited to make independent expenditures or if independent expenditures were discussed during the solicitation, but also if the recipient has simply made any independent expenditure in the current or previous election cycle. After *Citizens United,* however, donations from one organization to another are always available for use in "campaign-related activity." Thus, every single gift, loan, contribution, or other disbursement of funds made by a corporation, union, or nonprofit qualifies as money available for "campaign-related activity," except for gifts to 501(c)(3) organizations, which must refrain from political expenditures to retain their tax exempt status. This means nearly every donation above a certain threshold made to a non-501(c)(3) nonprofit is presumed to require disclosure if the group has recently engaged in any independent expenditures.

For example, if a state-based trade association made a single $15,000 independent expenditure in one congressional race in 2008, every donation above the threshold to the group in the 2010 election cycle would have to be disclosed, even if the group made no political expenditures at all in that cycle. Beyond the intrusion on privacy, the public using the disclosure database would be led to believe that more was spent on independent expenditures than actually was. Far from enlightening the public, this provision will merely feed the public misinformation.

In short, DISCLOSE presumes that every donation above a modest threshold must be disclosed, with only those donors who are aware of the regulations able to shield themselves from disclosure if they explicitly designate their contribution for non-campaign activities. Under *NAACP v. Alabama* and *Buckley v. Valeo,* however, it is the government that has the obligation to demonstrate that it is necessary to disclose the names of members of an organization.

Alternatively, the bill offers organizations the opportunity to establish a "campaign-related activity account," which is essentially a new form of corporate political action committee that can accept unlimited contributions to be used solely for independent expenditures. Any organization using such an account would only have to disclose donors who give to that account, rather than all members, although any transfer of funds from the organization's general treasury to the "campaign-related activity account" triggers the more complex disclosure regime outlined above. Moreover, if a group ever uses such a fund, it can only use that fund, and not its general treasury funds, for political spending, in perpetuity. Of course, the fundamental holding of *Citizens United* was that corporations have a right to make political expenditures from their general treasury funds, without using a separate fund, with its added expense and its reliance on funds donated solely for that purpose.

The end result of these provisions is to force non-profit corporations to choose between two options that have each been found unconstitutional by the Supreme Court. It can either disclose all of its donors to the government, a requirement that the Court ruled was unconstitutional in *NAACP v. Alabama*, or it must restrict its political spending to a "campaign-related activity account," contrary to the explicit holding in *Citizens United* that a corporation (or union) may pay for independent expenditures from its general treasury funds.

DISCLOSE then imposes yet another burden, requiring that the CEO or highest official of any organization making expenditures certify that he has reviewed and approved every statement and report filed by the organization, again under the threat of criminal penalties. In other words, the corporate CEO may not delegate duties for political spending to the Vice President for Government Relations, to a contract firm specializing in political reporting, or to anyone else. He or she is required by law to certify that he has personally reviewed each statement and FEC filing, and that it contains no error of material fact, and that none of the funds used came from donors who had specified otherwise.

None of this provides any added information to the public that is necessary to prevent corruption or its appearance, nor is this information necessary for the FEC to properly enforce the law. Rather, it appears designed to coerce corporate spenders into silence by threatening their CEOs with jail time for reporting errors, and forcing them to devote their time to matters normally delegated to subordinates in accordance with sound corporate management. This is government intimidation in its worst form.

The rules are especially burdensome to small businesses and grassroots organizations, which typically lack the resources for complicated compliance. Thus, the end effect of all this "enhanced disclosure" will be to ensure that only large corporations, unions, and advocacy groups can make political expenditures—the exact opposite of what the sponsors of DISCLOSE claim to desire. As we noted in our brief in *Citizens United,* the vast majority of corporations cannot afford to operate and organize PACs. Thus these regulatory burdens will favor large entities at the expense of grassroots politics.

c) Disclosure to Shareholders, Contributors, and Members
(Title III, Sec. 301)

DISCLOSE requires organizations that produce regular reports to inform their shareholders, members, and donors of political spending, and to include in those reports not just an aggregate amount spent on political activity but a line-item of every expenditure. This entry must include the date and amount of each expenditure, the name of the candidate and office sought, whether the expenditure was for or against the candidate, and the source of funds.

First, this information is redundant of what is already available to shareholders, members and donors on the independent expenditure reports required by 2 U.S.C. § 434 (c), which are typically available through the FEC's website within a day or two of filing. There is really no evidence that the public finds this information useful, and even less that reporting it twice will make a difference.

Second, the sheer size of the information will be a problem in many situations. For example, a non-profit organization that solicits contributions by direct mail to fund an independent expenditure campaign could have hundreds or even thousands of pages of donor information that would need to be included in printed material offered by the spending organization. As this information would merely go back to the same members and donors who gave to support the organization, it serves no real purpose.

The bill also specifies that those entities with an Internet site provide a direct link from the home page to a listing of independent expenditures and donors, and must also include an aggregate break down by political party of amounts in support of and opposition to candidates of each party, the amounts in support of or opposition to incumbents, and the amounts contributed to open seat elections. How information on the entity's support or opposition to incumbents is supposed to create better informed voters is not exactly clear.

The bill further specifies that the information must be in a format that is "machine-readable, searchable, sortable, and downloadable." This would impose substantial web design and capability requirements that are likely to reduce the willingness of some organizations to even have a website due to the increased cost and maintenance burden. The groups perhaps most likely simply to avoid having a website will be 527 organizations that spring up during a particular campaign and that do not have another ongoing, non-political mission: groups such as Americans Coming Together or Freedom's Watch. This would ironically lead to less disclosure by those very groups most often denounced as "shadowy." Meanwhile, small businesses, grassroots organizations, and union locals that maintain only basic websites would be discouraged from making expenditures because doing so would require them to spend thousands of dollars to upgrade their websites and purchase necessary reporting software to report information that is already readily available to the public from the Federal Election Commission. Larger companies and unions, however would be able to meet the burden. Thus this provision of the bill also benefits large, institutional players over small businesses and small grassroots groups.

d) Extension and Expansion of "Stand By Your Ad" Requirements to Independent Speech
(Title II, Sec. 214)

The DISCLOSE Act imposes new "Stand By Your Ad" (SBYA) disclaimer requirements on broadcast ads that again merely duplicate information already available to voters, while placing substantial new burdens on political speech. The requirements effectively cut in half the amount of political speech an organization can engage in with a 30-second commercial, demonstrating again that DISCLOSE is an attempt to do indirectly what the Supreme Court has said Congress can not do directly – silence corporations.

Under current law, all independent expenditures appearing on television or radio already must contain a verbal disclaimer of who is paying for the ad, stating "_____ is responsible for the content of this advertising," as well as written disclaimers, including notice as to whether the ad was authorized by a candidate or party. Thus, the public has ample information as to who is behind political broadcast ads.

Nevertheless, DISCLOSE would impose two new SBYA disclaimers on independent expenditures—one from the head of the organization or corporation and another from the "significant funder" of the ad or organization. The disclaimer from the organization requires the person to state his name, title, and the company or organization name *twice*, and then to add that he or she approves of the message.

An individual identified as the "significant funder" must also personally state his name, the fact that he is helping to pay for the ad, and that he approves the message. If the "significant funder" is an organization, then the CEO must state her name, title, the name of the organization *three* times, that the organization is helping to pay for the ad, and that she approves the message.[8]

No valid purpose is served by imposing these additional disclaimers, as additional statements simply verify that the organization does, in fact, approve the ad that it is already identified as paying for, and for which both the spender and significant donor are already identified in FEC reports. Voters understand that an ad paid for by the "Chamber of Commerce" represents business; that the trial lawyers association represents trial lawyers; and that Microsoft represents Microsoft. The effort here appears to be simply to harass speakers and discourage speech by piling disclaimer upon disclaimer, while providing no new meaningful information to the public.

In fact, the SBYA requirements dramatically reduce the time available for political speech by the speaker. Depending on the length of the CEO's name and the organization's name, making these three disclaimers could easily consume half of every 30-second ad, substantially reducing the amount of substantive political speech. Unfortunately, that appears to be exactly the purpose of this provision. The bill provides a vague exemption only for the written "top five" funder disclaimer, yet this carve out depends on an FEC rulemaking deemed unnecessary by another provision in the legislation.

Beyond the fact that it provides little or no useful information to voters, the "Stand By Your Ad" requirement may well be unconstitutional. The Supreme Court upheld SBYA provisions for candidate ads in *McConnell v. FEC,* but those disclaimers are not mandatory—they are only required if the candidate wishes to preserve a statutory right to receive the "Lowest Unit Charge" on ad purchases. This incentive would not be available to organizations engaging in independent expenditures. Thus, unlike the candidate provision previously upheld by the Court, which is voluntary and offers an incentive for compliance, the SBYA provision of DISCLOSE relies on involuntary mandates. It is doubtful the courts will approve of the government effectively hijacking as much as 50 percent of the speaker's message.[9] The First

[8] Note that the definition of "significant funder" is determined by the size of other donations to the effort. Thus, a person often will not know if he or she will become a "significant funder" until others have contributed.

[9] Additionally, the "significant funder" statement requirement imposes a burden on one type of speaker—nonprofit advocacy groups—that is not shared by businesses (who have no "contributors"), candidates, political parties, individuals, and unions, giving them less time to engage in political speech compared to others. This also makes DISCLOSE more vulnerable to challenge in court.

Amendment generally prohibits the government from dictating the content of a speaker's message.[10]

3) DISCLOSE's Definitions of Independent Expenditures and Electioneering Communications are Unenforceable
(Title II, Sections 201 and 202)

While adding layer upon layer of duplicative "disclosure" and "disclaimer" requirements on speakers, DISCLOSE also attempts to vastly expand the scope of regulated speech. It does this in two primary ways.

First, DISCLOSE defines independent expenditures subject to reporting as including any speech that is "the functional equivalent of express advocacy." In *Buckley v. Valeo,* the Supreme Court interpreted the definition of "expenditure" under the Act to be limited to "express advocacy," speech using explicit words of election or defeat such as "vote for," "support," "defeat" and the like. This narrowing definition, the Court ruled, was necessary to avoid questions of unconstitutional vagueness. Twenty-seven years later, in *McConnell v. FEC* the Supreme Court ruled that Congress was not limited to regulating "express advocacy," but could regulate other campaign speech that was "the functional equivalent of express advocacy." However, in that case, the Court had before it a particular definition of covered speech: "electioneering communications," clearly defined as certain broadcast ads run within 60 days of a general election or 30 days of a primary, and mentioning a candidate —a standard that all sides admitted was not vague. That shifted the constitutional inquiry from one of vagueness to one of overbreadth, and the Court ultimately held that the new statute was not overly broad.

In *Wisconsin Right to Life v. FEC ("WRTL")*, 551 U.S. 449 (2007), however, the Court clarified that in order for speech to be constitutionally limited, it had to meet both the definition of an electioneering communication (i.e., not be overly vague) *and* it had to be susceptible of no reasonable interpretation other than a call to vote for or against a particular candidate (i.e., it could not be overly broad). Neither *McConnell* nor *WRTL* did away with the requirement that the statute not be vague, nor did either hold that "the functional equivalent of express advocacy" was itself a term that sufficiently defined speech that could be regulated. Rather, they used the phrase merely to explain why another very clearly defined type of speech—"electioneering communications"—could be regulated in the same way as "express advocacy." However, the term, "the functional equivalent of express advocacy" is not, on its own, a clearly defined term that avoids vagueness problems.

The bill attempts to address this problem by suggesting that the "functional equivalent of express advocacy" can be defined by reference to "whether the communication involved mentions a candidacy, a political party, or a challenger to a candidate, or takes a position on the candidate's character, qualifications, or fitness for office." Such language, however, is not helpful. While the *WRTL* Court, evaluating for overbreadth, found that the specific ads in question lacked any of these indicia, 551 U.S. 470, it did not suggest that some general inquiry into these factors could, alone, make the speech subject to regulation. Quite the contrary, the

[10] *Hurley v. Gay, Lesbian and Bisexual Group of Boston,* 515 U.S. 557 (1995)

Court noted that, "this test is only triggered if the speech meets the bright line requirements of BCRA §203 [defining "electioneering communications"] in the first place. *Id.* at 474, fn. 7.

The criteria that DISCLOSE would use to regulate independent expenditures are remarkably similar to the FEC's regulation at 11 C.F.R. 100.22(b), which has repeatedly been held to be unconstitutionally vague by federal courts and, though still on the books, no longer enforced. *See Maine Right to Life Committee v. FEC,* 98 F. 3d 1 (1st Cir. 1996); *FEC v. Christian Action Network,* 110 F. 3d 1049 (4th Cir. 1997); *Right to Life of Dutchess County v. FEC,* 6 F. Supp. 2d (S.D.N.Y. 1998); *Iowa Right to Life v. Williams,* 187 F. 3d 963 (8th Cir. 1999)(striking down identical state regulation); and *Virginia Society for Human Life v. FEC,* 83 F. Supp. 2d 668 (E.D. Va. 2000). These rulings were not overturned by *McConnell* and were given new force by *Citizens United.*

Leaving aside the merits of these First Amendment concerns, the criteria proposed by DISCLOSE are simply unworkable from an enforcement standpoint. If Congress passes DISCLOSE, it would place the FEC in the same untenable position it was in during much of the 1990s, when it was forced to make decisions regarding core First Amendment rights based on a "totality of the circumstances" emerging from vague criteria with no clear guidelines. Decisions to find violations on such grounds would routinely be subject to legal attack (as they were in the 1990s), while decisions not to find violations would be trumpeted as "proof" that the Commission is "dysfunctional." And all of the decisions would be open to charges of partisan bias. This is not a recipe to build public confidence in government or the electoral system, and not a position any of us would wish on our successors at the FEC.

The second way in which DISCLOSE expands regulation is by changing the definition of "electioneering communication." Under BCRA, the definition of "electioneering communications" was limited to broadcast ads run in the 30 days before a primary or in the 60 days before a general election. The Senate version of DISCLOSE dramatically expands this limited window to cover ads mentioning a candidate from any time starting 90 days before the primary all the way through the general election. Thus, for example, in 2010 the definition would have covered all independent ads in Indiana from the beginning of February through Election Day in November, a period of nine months, during much of which Congress will be in session. For Illinois, whose 2010 primary was held on February 2, it would cover an entire year, beginning in November 2009. Coupled with the extremely low threshold for triggering a ban on corporate (but not union) government contractors, this provision effectively prohibits thousands of small corporations from funding issue ads during long periods of time—time when Congress is in session and debating or voting on public policy issues.

When the Supreme Court upheld the electioneering communications provisions of BCRA in *McConnell*, it did so on the basis of several studies and record evidence produced by the government and interveners that allegedly demonstrated that most ads mentioning a candidate during the short time close to an election were in reality "election ads" rather than "issue ads." There is no congressional record established for the proposition that ads run after the primary but more than five months before the general election, as could have been the case in Illinois, Indiana, and Ohio in 2010, are not "true issue ads."

Citizens United held that Congress could not prohibit corporate expenditures in elections. DISCLOSE responds by effectively prohibiting large numbers of corporations not only from paying for direct candidate ads, but from paying for many issue ads that they were allowed to fund even prior to *Citizens United.* The Supreme Court, however, has routinely struck down statutes that attempt to do indirectly what the government is prohibited from doing directly. DISCLOSE's new definition of "electioneering communication" almost certainly meets that criterion.

4) <u>While Duplicating the Functions of Existing Law, DISCLOSE Adds Substantially to the Complexity of the Law</u>

As we noted in our amicus brief in *Citizens United,* the FEC currently has regulations in place governing speech by 71 different types of speakers governing 33 distinct types of speech. This type of complexity means that the law is now far beyond the point at which its distinctions can be easily grasped even by the best paid professionals, let alone laymen. Many of these distinctions flow directly from the complex statutes governing federal campaign finance, which now exceed 150 pages. Others are dictated by Court decisions based on the Constitution. Still others are the result of FEC regulatory choices that are an attempt to faithfully enforce the statute in a manner conforming to the First Amendment.

We believe that when a statute governing something as basic as political activity is beyond the understanding of the average citizen seeking to engage in political activity, it tends to increase, rather than decrease, skepticism of government. The complexity of the law leads to large numbers of technical violations (indeed, most violations reported to the FEC are technical reporting violations or revolve around unwitting errors by inexperienced or volunteer campaign staff), and these technical violations become fodder for "scandal reporting" journalists. The end result is to create the appearance of corruption where none actually exists.[11]

Further, the complexity and uncertainty around the law creates opportunities for partisans, both in and outside of the campaigns themselves, to file complaints alleging "serious" violations of the law on the flimsiest of legal grounds. Because most journalists—like most other citizens—will be unable to evaluate the true seriousness of the charges, this is an effective tactic to create the appearance of scandal where none really exists. And because investigating and analyzing a complaint takes time, complaints can rarely be resolved before an election.[12] Thus filing complaints and creating the appearance of corruption where it otherwise would not exist is a common side effect of the complexity of the FECA.

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[11] *See* Jeffrey Milyo, "Do State Campaign Finance Reforms Increase Trust and Confidence in Government," Paper presented at Annual Meeting of the Public Choice Society, Monterrey, California, March 2010; Stephen Ansolabehere, Erik Snowberg and James Snyder. "Unrepresentative Information: The Case of Newspaper Reporting on Campaign Finance," 69 *Public Opinion Quarterly* 213-231 (2005); David Primo, "Campaign Contributions, the Appearance of Corruption, and Trust in Government," in *Inside the Campaign Finance Battle: Court Testimony on the New Reforms* (Corrado, Mann, and Potter, eds. 2003).

[12] Under the statute a minimum of 60 days is required before the FEC may file an enforcement suit, assuming that the FEC literally had zero turnaround time needed to process and read complaints and responses, to do research and investigation, to prepare its case, or even for required mail service of documents.

Additionally, this complexity tends to ensnare the most authentic grassroots political activity in its grasp. The all-too-true aphorism about the Bipartisan Campaign Reform Act was that the initials "BCRA" really stood for "Before Campaigning, Retain Attorney." But average Americans—say the owner of a small corporation, or leaders of a local grassroots organization—should not have to retain an attorney before engaging in political activity and political speech.

The inability to understand the law breeds cynicism in many Americans. The FECA, as a result of statutory language and judicial decisions, already includes separate definitions for "Federal Election Activity," activity "for the purpose of influencing a Federal election," "generic campaign activity," "public communications," "electioneering communications," speech "expressly advocating the election or defeat of a candidate," and many more. The law establishes a bewildering array of types of speakers and accounts, with differing rules for groups organized under different sections of the tax code, among many other distinctions. There are "contributions," "disbursements," "expenditures," "independent expenditures" and "Levin Funds," among others, each with their own definitions.

To this, DISCLOSE would add several more fine distinctions, new categories of speech and regulated entities, and new forms and reporting requirements. The bill would create newly defined terms of "campaign-related activity" (in addition, of course, to the many categories named above); "applicable election period;" "covered communication," "communications referring to candidates," "communications made on behalf of candidates," "covered organization," "public independent expenditure" (separate from "independent expenditure"), "unrestricted donor payment," "significant funder," and more. It creates a new type of PAC, a "campaign-related activity account," that a corporation might maintain in addition to its traditional PAC now allowed under FECA.[13]

In numerous ways DISCLOSE is merely complex and burdensome more than it is enlightening. For example, as noted above, under current law, any organization paying for an ad must state that it is doing so in the ad, and must file reports with the FEC that include the names of donors who have contributed for the ad. DISCLOSE now adds to that a requirement that not only the CEO of the organization make a "Stand By Your Ad" statement, but that a "significant funder" make a SBYA statement. However, the statement required by the "significant funder" will vary depending on the organizational form of the significant funder.

Similarly, one of the few beneficial features of DISCLOSE is that it loosens the restraints on "coordination" between candidates and political parties, a reform endorsed by scholars at such divergent organizations as the Brookings Institute, the Campaign Finance Institute, and the Center for Competitive Politics. Yet rather than do so in a straightforward fashion, by raising the cap on party coordinated expenditures or eliminating it altogether, DISCLOSE approaches the issue by creating two new definitions of "coordination," one to be used for parties, one to be used for everybody else. This is typical of the approach taken by DISCLOSE throughout.

The merits of restrictions on campaign contributions and expenditures can be, and in fact have been, debated ad nauseam. But whatever the merits of particular reforms, at some point the

[13] We suspect that for the casual user, seeing two different corporate accounts, a "political action committee" and a "campaign-related activity account" will make harder to make sense of published disclosure data.

sheer weight and complexity of regulation must raise concerns under a First Amendment that reads, "Congress shall make no law..." Excessive regulation, and excessively complex regulation, chills political speech, not only by threatening citizens with jail time (as DISCLOSE does) or fines for ordinary political activity, but also by raising the costs of speaking in both time and money. A system that seems incomprehensible to all but a handful of experts in the field leaves citizens feeling distanced from their democracy, not more confident in it. The perception that campaign results are determined by who can hire the best lawyers, consultants and accountants is no more likely to inspire trust or confidence than the perception that money determines results. Our present system, unfortunately, has given us both, and DISCLOSE would take us further down that path.

Conclusion

While recognizing the policy and constitutional controversies that form the backdrop to campaign finance reform, we have tried to avoid being drawn into those discussions, except to note that the constitutional arguments are serious and will greatly affect enforcement of the statute. What we wish to convey, however, is that DISCLOSE is unnecessary, largely replicating existing law in its essentials, and providing little information of value to the electorate. This it does, we believe, at significant practical costs: it makes the law more complex, more incomprehensible to ordinary voters, more open to subjective enforcement, and more open to manipulation by political partisans seeking to file charges for partisan gain.

Additionally, it would put the FEC repeatedly in the position of having to challenge Supreme Court precedent, and of having its regulations and decisions subject to constant judicial challenge. The Act's abandonment of the historical matching treatment of unions and corporations will, in itself, cause a substantial portion of the public to doubt the law's fairness and impartiality. For all of these reasons, it is unlikely that democracy will be strengthened by DISCLOSE. Instead, it is a law likely to breed more cynicism and contempt for the government. As the legislative debate proceeds, we are hopeful that Congress will conclude that the DISCLOSE Act is misguided and should not be enacted.

Joan D. Aikens
(1975-1998)

David M. Mason
(1998-2008)

Hans A. von Spakovsky
(2006-2007)

Lee Ann Elliott
(1982-2000)

Bradley A. Smith
(2000-2005)

Michael E. Toner
(2002-2007)

Thomas J. Josefiak
(1985-1991)

Darryl R. Wold
(1998-2002)

Mr. LUNGREN. Mr. Chairman, I ask unanimous consent to enter into the record a letter of opposition to the original bill sent to this committee by over 85 organizations representing a wide spectrum of organizations representing businesses.

The CHAIRMAN. Without objection, so ordered.

[The information follows:]

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, Airconditiong & 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

The CHAIRMAN. If not, the question is on the amendment.

All those in favor, say aye.

All those opposed, say no.

In the opinion—you voted against your own amendment.

In the opinion of the Chair, the noes have it.

Mr. LUNGREN. Oh, my amendment. I thought you——

Ms. LOFGREN. Our staffs ought to talk about this.

The CHAIRMAN. The question is on the amendment.

All those in favor, say aye.

All those opposed, say no.

In the opinion of the Chair the noes have it. The noes have it and the amendment is not agreed to.

Are there any additional amendments?

If there are no additional amendments, the question is now on agreeing to the amendment in the nature of a substitute, as amended.

All those in favor, say aye. Those opposed, say no.

In the opinion of the Chair, the ayes have it and the amendment, as awarded, is agreed to.

Mr. LUNGREN. I ask for a roll call.

The CHAIRMAN. Will the Clerk call the roll?

The CLERK. Ms. Lofgren.

Ms. LOFGREN. Aye.

The CLERK. Mr. Capuano.

Mr. CAPUANO. Aye.

The CLERK. Mr. Gonzalez.

[No response.]

The CLERK. Mrs. Davis of California.

Mrs. DAVIS of California. Aye.

The CLERK. Mr. Davis of Alabama.

Mr. DAVIS of Alabama. Aye.

The CLERK. Mr. Lungren.

Mr. LUNGREN. No.

The CLERK. Mr. McCarthy.

Mr. MCCARTHY. No.

The CLERK. Mr. Harper.

Mr. HARPER. No.

The CLERK. Mr. Brady.

The CHAIRMAN. Aye.

The CHAIRMAN. The ayes are five, the nays are no—in the opinion of the Chair, the ayes have it. And the amendment, as awarded to the amendment, is agreed to.

111th Congress
Committee on House Administration
U.S. House of Representatives

DATE: THURSDAY, MAY 20, 2010

ROLL CALL NO. 111-11

SUBJECT: H.R. 5175 as amended

	RESPONSE TO CALL OF THE ROLL			OFFICE EXTENSION
NAME	AYE	NO	ANSWERED PRESENT	
Ms. Lofgren	X			53072
Mr. Capuano	X			551111
Mr. Gonzalez				53236
Mrs. Davis, of California	X			52040
Mr. Davis, of Alabama	X			52665
Mr. Lungren		X		55716
Mr. McCarthy		X		52915
Mr. Harper		X		55031
Mr. Brady	X			54731

The Chair now moves to report H.R. 5175, as amended, favorably to the House.

All those in favor, say aye.

Those opposed, no.

In the opinion of the Chair, the ayes have it. And the ayes have it.

The bill now, as amended, is reported favorably to the House. Without objection, a motion to reconsider is laid on the table.

Members will have 2 additional days provided by the House rules to file views.

The CHAIRMAN. Without objection, the staff may make technical and conforming changes to the legislation considered today.

The committee now stands adjourned. I thank all of you, and have a good flight back, a good travel back, and a good weekend. Thank you.

[Whereupon, at 5:45 p.m., the committee was adjourned.]