

# KEY VOTE **ALERT!**



Congressional & Public Affairs  
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June 14, 2010

TO THE MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES:

The U.S. Chamber of Commerce, the world's largest business federation representing the interests of more than three million businesses and organizations of every size, sector, and region, strongly opposes H.R. 5175, the "Democracy Is Strengthened by Casting Light on Spending in Elections Act (DISCLOSE Act)," because it would violate free speech protections embodied in the First Amendment. The Chamber urges you to vote against this legislation when it is considered by the full House of Representatives. Furthermore, the changes to the legislation that would be provided by the expected manager's amendment in no way address the Chamber's fundamental concerns with the legislation.

**H.R. 5175 is an assault on First Amendment rights:** Political speech, by corporations, is protected by the First Amendment. The Supreme Court recognized that right not only in its *Citizens United v. Federal Election Commission* *Citizens United* decision, but in several earlier decisions. Moreover, First Amendment freedoms are at their height when the speaker is addressing matters of public policy, politics, and governance. As the Supreme Court has emphasized, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office." *Eu v. San Francisco County Democratic Central Comm.*, 489 U.S. 214, 223 (1989). In addition, the Supreme Court repeatedly has recognized that voluntary associations are vital participants in the public debate and that government attempts to curb participation in associations in order to stifle their voice in the public debate violate the First Amendment.

The publicly announced intent of the bill's authors, however, is to squelch this constitutionally protected speech and to try and hobble associations that give voice to their members' views in the political process. Sen. Schumer, the prime sponsor of the Senate companion to H.R. 5175, has said the bill "will make [corporations] think twice" before attempting to influence election outcomes, and that this "deterrent effect should not be underestimated." Other supporters of the legislation, both on and off of Capitol Hill, have made similar arguments in support of the legislation.

**There is no urgency for Congress to act:** This legislation would purportedly address the *Citizens United* decision, which was handed down just four months ago. However, there is no "crisis" for which H.R. 5175 is a solution. More than half of the states in the U.S. do not limit political spending by corporations or unions, none of whose political systems are in crisis. It is important to note that the "Bipartisan Campaign Reform Act of 2002" took years to craft and still was recognized by

liberals and conservatives alike to pose serious constitutional concerns. Any further campaign-finance legislation similarly requires careful deliberation and working across aisles—not an election-year rush to judgment such as H.R. 5175.

**H.R. 5175 would target the free speech rights of the business community:** H.R. 5175, with its overwhelming emphasis on corporate speech and business associations, discriminates against specific speakers because of the content of their speech. The legislation’s blanket prohibition on all election-related speech by government contractors is especially problematic. Thousands of corporations regularly participate in contracts with the federal government and, under H.R. 5175, they would be categorically barred from making their political views known. That prohibition on core political speech is flatly unconstitutional and directly inconsistent with *Citizens United*’s holding that Congress can prohibit political speech only where it has evidence of *quid pro quo* corruption. There is no such evidence before Congress that supports such a blanket prohibition.

**Political speech by labor unions would not be covered by the legislation:** Although 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, their political speech would effectively not be covered by H.R. 5175. The legislation would require corporations and labor unions to report donors who have given as little as \$600 during the year. Because an average union member pays annual dues far beneath that threshold, most unions would not be required to disclose their donors even when they spend millions of dollars on political advertising.

The blanket restrictions on political participation by government contractors are effectively inapplicable to unions. The legislation would prohibit many government contractors from making any independent expenditures or funding any electioneering communications if the contractor has a government contract valued at \$10 million, as provided in the manager’s amendment. Although a number of unions hold government contracts, few – if any – hold contracts that reach that amount. That threshold, which would encompass thousands of corporations, would largely exempt unions from the government-contractor prohibition. Importantly, unions and their members benefit tremendously from government largesse. Last year for the first time ever there were more union workers in the public sector (federal, state, and local government) than in the private sector. This large union stake in government jobs means that, more than ever, unions will support candidates who increase the size of government, hire more unionized government employees, and agree to union contracts with lavish pay and benefits in appreciation for unions’ political support. Yet, despite this broad and direct monetary interest, H.R. 5175 aims its government-contractor restriction only at businesses.

The legislation’s prohibition on political speech by “foreign-controlled domestic corporations” is also inapplicable to unions. The bill would impose on domestic corporations the speech restrictions that now apply to foreign nationals when, for example, a foreign national owns 20 percent or more of the corporation’s voting shares. Thus, a domestic corporation that is 80 percent owned by United States citizens could lose its First Amendment right to engage in political speech. In contrast, H.R. 5175 would not establish a threshold of foreign membership or control that would strip a union of its corresponding right to speak on political issues.

To conclude, the clear purpose of this legislation is irretrievably to upend First Amendment protections of political speech in the months leading up to an election. The protection of free speech rights are too important to the foundation of American democracy to be infringed upon. Unfortunately, H.R. 5175 does just that. Accordingly, the Chamber strongly urges you to oppose H.R. 5175. **The Chamber will include votes on, or in relation to, this issue in our annual *How They Voted* scorecard.**

Sincerely,

A handwritten signature in black ink, appearing to read "R. Bruce Josten". The signature is fluid and cursive, with the first name "R." and last name "Josten" being the most legible parts.

R. Bruce Josten