

July 22, 2014

The Honorable Charles E. Schumer  
Chairman  
Committee on Rules & Administration  
United States Senate  
Washington, DC 20510

The Honorable Pat Roberts  
Ranking Member  
Committee on Rules & Administration  
United States Senate  
Washington, DC 20510

To Chairman Schumer and Ranking Member Roberts:

We write to express our strong opposition to the latest Senate version of the so-called DISCLOSE Act of 2014, S. 2516, which the Senate Rules Committee may consider in the coming days.

This legislation, like its predecessors in the 111th and 112th Congresses, is designed to chill the political speech of corporations, business interests, and others, while giving labor unions special protections. As discussed below, the bill does not propose genuine reform—the disclosure requirements are transparently political and ultimately unconstitutional.

***The legislation favors labor unions over corporations and business associations.*** The legislation is purported to be even-handed in its treatment of labor unions, corporations, and business associations, but the reality is that it is designed to burden business groups significantly while effectively exempting labor unions. The legislation has two key provisions that protect from disclosure the flow of money from union members to local union chapters and then to the large “international” labor unions.

First, an organization that engages in political conduct is only required to disclose payments to it that exceed \$10,000 over a specified time frame. This means, as a practical matter, that local union chapters will not have to disclose the payments of individual union members to the union, even if those funds will be used for political purposes.

Second, the legislation exempts from the disclosure requirements transfers from affiliates that do not exceed \$50,000 over a specified time frame. As a result, an international union will not have to disclose the transfers made to it by many of its smaller local chapters.

Although the exemptions that shield unions from burdensome disclosure may be facially applicable to business associations, they will have little practical effect, because business associations generally lack the labor unions’ unique, pyramid-style business model. Unlike labor unions, business associations do not have a ground-up funneling structure built on the mandatory dues of millions of members. Many of a business association’s corporate members might pay membership dues of more than \$10,000 over

a defined time period, which would trigger the legislation's disclosure provisions. Similarly, most business associations do not have a vast network of local affiliates from which they can draw up to \$50,000 in exempted transfers.

The legislation's structural favoritism of labor unions is no accident. Labor unions have been—and continue to be—some of the heaviest spenders during election season. A recent study found that organized labor “spent an estimated \$1.7 billion on electioneering and lobbying during the 2012 election cycle.” National Institute for Labor Relations Research, *Big Labor turns focus further from “workplace representation” to electioneering* (Aug. 29, 2013). That is **more than two and one-half times** the average amount that organized labor spent annually from 2005 to 2011. See Tom McGinty & Brody Mullins, *Political Spending by Unions Far Exceeds Direct Donations*, Wall St. J. (July 10, 2012). Unions are gearing up to spend huge amounts once again in 2014. For example, the AFL-CIO alone has announced plans to spend \$300 million just on state and local campaigns. Steven Greenhouse, *Labor Leaders See Focus on Wages as Key to Union and Democratic Victories*, N.Y. TIMES (Feb. 19, 2014).

***The legislation would unconstitutionally target certain speech based on the identity of the speaker.*** The legislation's manifest purpose is to impose exceptional burdens on the speech of corporations and business interests based on their identity as corporations and their presumed hostility to the political objectives of the legislation's supporters. As the Supreme Court held in *Citizens United*, “the First Amendment generally prohibits the suppression of political speech based on the speaker's identity.” *Citizens United v. FEC*, 130 S. Ct. 876, 905 (2010).

This impermissible intent is evident from the crafting of the legislation and many of the statements of the legislation's supporters. Senators Whitehouse and Franken acknowledged that DISCLOSE 2014 is aimed primarily at *corporate speech*. See Press Release, [Senate Democrats Introduce Legislation to Crack Down on Secret Spending in Elections](#) (Office of Sen. Whitehouse) (June 24, 2014). Senator Patrick Leahy echoed this sentiment, making clear that DISCLOSE 2014 seeks to limit “*corporate money*” and “*corporate spending*,” in other words, corporate political speech. Press Release, *Statement of Senator Patrick Leahy (D-Vt.), On The Introduction Of The DISCLOSE Act 2014* (Office of Sen. Leahy) (June 24, 2014) (emphasis added). Incumbents, of course, have a vested interest in restricting political speech and “outing” critical voices. But such discriminatory speech restrictions do not pass constitutional muster.

***The clear purpose of the legislation is to facilitate retaliation against certain speakers, in violation of the First Amendment.*** By requiring groups to disclose the names and addresses of their donors, the legislation is intended to facilitate retaliation against unpopular or unfavorable political views, which also infringes constitutional rights, because the First Amendment does not permit the government to require membership disclosure if there is a “reasonable probability” that the donors will be subject to “threats, harassment, or reprisals.” *Doe v. Reed*, 561 U.S. 186, 130 S. Ct. 2811, 2820-21 (2010) (quoting *Buckley v. Valeo*, 424 U.S. 1, 74 (1976) (per curiam)); see also *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449 (1958).

The probability of unconstitutional reprisals against political speakers is palpable here; partisan interest groups already are announcing plans for them. For example, the interest group Media Matters has made clear that it would use campaign-spending disclosure to “provoke backlashes among companies’ shareholders, employees, and customers, and the public-at-large.” Media Matters, *A Three Year Campaign* (2012).

Groups from across the political spectrum have recognized the threat this legislation poses to First Amendment interests. The ACLU stated with respect to DISCLOSE 2012 that the bill would “infringe on the anonymous speech rights of individuals and groups,” thereby “subjecting them to harassment and potentially discouraging valuable participation in the political process.” Letter from ACLU to Senate Committee on Rules & Administration (Mar. 28, 2012). DISCLOSE 2014 does nothing to correct these deficiencies.

Finally, the legislation’s sponsors argue this year – as they did in 2010 and 2012 – that DISCLOSE 2014 is needed to address supposed consequences of the Supreme Court’s decision in *Citizens United*. Press Release, *Statement of Senator Patrick Leahy (D-Vt.), On The Introduction Of The DISCLOSE Act 2014* (Office of Sen. Leahy) (June 24, 2014). But while “[c]ampaign finance-reform advocates” had predicted that “unlimited donations from corporations, newly empowered to give limitless sums, would have a corrupting influence on American democracy” – those “limitless sums” in fact “**have not materialized**.” Adam Sorensen, *Among Romney Super PAC’s Corporate Donors, Big Names Not All Easy to Spot*, TIME.COM (Feb. 22, 2012) (emphasis added). The legislation thus is an attempt to use a manufactured problem to impose content-based burdens on constitutionally-protected speech.

It is plain that DISCLOSE 2014, like its predecessors in the 111<sup>th</sup> and 112<sup>th</sup> Congresses, is a purely partisan effort to silence one group of speakers—the business community. The Senate should resist the urge to engage in such blatant election-year chicanery and should focus instead on the many pressing issues that are facing this nation’s economy. We urge you to oppose this legislation.

Sincerely,

60 Plus Association  
Aeronautical Repair Station Association  
Aerospace Industries Association  
Agricultural Retailers Association  
Air Conditioning Contractors of America  
American Apparel & Footwear Association (AAFA)  
American Association of Exporters and Importers  
American Bakers Association  
American Composites Manufacturers Association  
American Insurance Association  
American Lighting Association

American Moving & Storage Association  
American Rental Association  
American Supply Association  
American Trucking Associations  
Arizona Business Coalition  
Arizona Chamber of Commerce and Industry  
Arizona Manufacturers Council  
Arkansas State Chamber of Commerce /Associated Industries of AR  
Ashland Area Chamber of Commerce – OH  
Associated Builders and Contractors, Inc.  
Associated Builders and Contractors, Delaware Chapter  
Associated Builders and Contractors, Empire State Chapter  
Associated Builders and Contractors of Michigan  
Associated Builders and Contractors, Rhode Island Chapter  
Associated Builders and Contractors, Rocky Mountain Chapter  
Associated Builders and Contractors, Western Washington Chapter  
Associated Equipment Distributors  
Associated General Contractors of America  
Associated Oregon Industries  
Associated Wire Rope Fabricators  
Association for Corporate Growth  
Austin Area Chamber of Commerce – MN  
Automotive Aftermarket Industry Association  
Beaver Dam Chamber of Commerce – WI  
Bismarck-Mandan Chamber of Commerce – ND  
Buffalo Niagara Partnership – NY  
Business Council of Alabama  
Cabarrus Regional Chamber of Commerce – NC  
California Chamber of Commerce  
Catawba County Chamber of Commerce – NC  
Center for Individual Freedom  
Central Florida Chapter Associated Builders and Contractors, Inc.  
Chamber Southwest Louisiana  
ChamberWest Regional Chamber of Commerce (representing West Valley City,  
Taylorsville and  
Kearns) – UT  
Chester County Chamber of Business & Industry – PA  
Chicagoland Chamber of Commerce – IL  
Colorado Association of Commerce and Industry  
Commerce Lexington, Inc. (Greater Central Kentucky Chamber of Commerce)  
Construction Industry Round Table  
Delaware State Chamber of Commerce  
East Valley Regional Chamber of Commerce (representing Millcreek) – UT  
Electronic Retailing Association  
Electronic Security Association (ESA)  
Equipment Marketing & Distribution Association (EMDA)

Fairfax County Chamber of Commerce – VA  
Family Research Council  
Fargo Moorhead West Fargo Chamber of Commerce – ND  
Florida Chamber of Commerce  
Fresno Chamber of Commerce – CA  
Fullerton Chamber of Commerce – CA  
Galion-Crestline Area Chamber of Commerce – OH  
Georgia Mining Association  
Goleta Valley Chamber of Commerce – CA  
Graham Texas Chamber of Commerce  
Greater Bakersfield Chamber of Commerce – CA  
Greater Boca Raton Chamber of Commerce – FL  
Greater Columbia Chamber of Commerce – SC  
Greater Irving-Las Colinas Chamber of Commerce – TX  
Greater Louisville Inc. – the Metro Chamber of Commerce – KY  
Greater North Dakota Chamber of Commerce  
Greater Phoenix Chamber of Commerce – AZ  
Greater Pittsburgh Chamber of Commerce – PA  
Greater Raleigh Chamber of Commerce – NC  
Greater Springfield Chamber of Commerce – VA  
Hampton Roads Chamber of Commerce – VA  
Heating, Air-Conditioning & Refrigeration Distributors International (HARDI)  
Hilton Head Island-Bluffton Chamber of Commerce – SC  
Illinois Chamber of Commerce  
Indiana Chamber of Commerce  
Industrial Supply Association  
International Foodservice Distributors Association  
International Franchise Association  
Johnson City / Jonesborough / Washington County Chamber of Commerce – TN  
Joliet Region Chamber of Commerce and Industry – IL  
Kauai Chamber of Commerce – HI  
Kentucky Chamber of Commerce  
Kingsport Chamber of Commerce – TN  
Los Angeles Area Chamber of Commerce – CA  
Lubbock Chamber of Commerce – TX  
Management Association for Private Photogrammetric Surveyors (MAPPS)  
Manhattan Chamber of Commerce – NY  
Maryland Chamber of Commerce  
Metals Service Center Institute  
Michigan Chamber of Commerce  
Missouri Chamber of Commerce and Industry  
Mobile Area Chamber of Commerce – AL  
Montana Chamber of Commerce  
NAHAD – The Association for Hose & Accessories Distribution  
Naperville Area Chamber of Commerce – IL  
National Association of Home Builders

National Association of Manufacturers  
National Association of Wholesaler-Distributors  
National Black Chamber of Commerce  
National Council of Chain Restaurants  
National Federation of Independent Business  
National Independent Automobile Dealers Association  
National Marine Distributors Association  
National Mining Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Society of Professional Surveyors  
National Stone, Sand & Gravel Association  
National Taxpayers Union  
Nebraska Chamber of Commerce and Industry  
New Jersey Motor Truck Association  
New Jersey State Chamber of Commerce  
Newberry County Development Board / Chamber of Commerce – SC  
North American Equipment Dealers Association  
North Carolina Chamber  
North Country Chamber of Commerce – NY  
Northern Kentucky Chamber of Commerce  
Ohio Chamber of Commerce  
Orlando Regional Chamber of Commerce – FL  
Outdoor Power Equipment and Engine Service Association  
Pacific-West Fastener Association  
Palm Desert Area Chamber of Commerce – CA  
Pelican Chapter Associated Builders and Contractors, Inc.  
Pennsylvania Chamber of Business and Industry  
Prince William Chamber of Commerce – VA  
Retail Grocers Association of Greater Kansas City  
Retail Industry Leaders Association  
Rhode Island Chamber of Commerce Coalition  
Richland Area Chamber of Commerce – OH  
Rochester Area Chamber of Commerce – NY  
Salt Lake Chamber – UT  
Santa Clara Chamber of Commerce and Convention-Visitors Bureau – CA  
Schuylkill Chamber of Commerce – PA  
Simi Valley Chamber of Commerce – CA  
Small Business & Entrepreneurship Council  
South Dakota Chamber of Commerce & Industry  
South Shore Chamber of Commerce – MA  
Southwest Cable Communications Association  
Southwest Valley Chamber of Commerce – AZ  
SouthWestern Equipment Dealers Association  
St. TammanyWest Chamber of Commerce – LA

Tennessee Chamber of Commerce & Industry  
Textile Care Allied Trades Association  
The Business Council of New York State  
The Capitol Group  
The Chamber of Reno, Sparks, and Northern Nevada  
The Greater Lafayette Chamber of Commerce – LA  
The Greater Omaha Chamber of Commerce – NE  
The Kansas Chamber  
The Kansas Food Dealers Association  
The Longview TX Chamber of Commerce  
The National Association of Chemical Distributors  
The Ohio Society of CPAs  
The Southern Wayne County Regional Chamber – MI  
The State Chamber of Oklahoma  
The West Virginia Chamber  
Tire Industry Association  
Tucson Metro Chamber – AZ  
U.S. Chamber of Commerce  
Utah Valley Chamber of Commerce  
Virginia Chamber of Commerce  
White Pine Chamber of Commerce-Ely, Nevada – NV  
Winona Area Chamber of Commerce – MN  
Wisconsin Grocers Association  
Wisconsin Manufacturers & Commerce  
Wisconsin Transportation Builders Association

cc: Members of the Committee on Rules & Administration