



Insight

The Disclose Act

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Senator Schumer and Congressman Van Hollen are pushing campaign finance reform known as the Disclose Act. It has spawned enormous confusion. My take is:

- The bill has nothing to do with the Supreme Court's decision in Citizens United,
- Likely violates the 1st Amendment,
- Appears too rushed to be thoughtful reform, and
- In the end appears driven by purely political motives.

The Disclose Act is not responsive to the Supreme Court's Citizens United decision.

- In Citizens United, the Supreme Court ruled aspects of campaign-finance laws regarding electioneering activity violated the First Amendment rights of corporations and unions. However, the bill's principal provisions either address only corporate speech or are calibrated to have little practical effect on union political activity.

The Schumer-Van Hollen legislation appears to violate the 1st Amendment.

Representative Capuano, a supporter of the bill, admits that some provisions likely would be ruled unconstitutional.

- Speech by corporations is protected by the First Amendment. The Supreme Court recognized that not only in Citizens United, but in countless earlier decisions.
- The intent of the bill is to squelch this constitutionally protected speech. Senator Schumer has said the bill "will make [corporations] think twice"

before attempting to influence election outcomes, and that this “deterrent effect should not be underestimated.”

- The legislation’s blanket prohibition on all election-related speech by certain government contractors is especially problematic. Thousands of corporations regularly participate in contracts with the federal government and, under Schumer - Van Hollen, many of them are categorically barred from making their political views known.

The Disclose Act rushes where patience is needed.

- Citizens United was handed down just 4 months ago. It does not pose an urgent problem that requires immediate action by Congress. More than half the States do not limit political spending by corporations or unions, including Virginia, Florida, and Oregon, among others. These are not States whose political systems are in crisis.
- McCain-Feingold took years to craft and still both liberals and conservatives expressed constitutional concerns. When McCain-Feingold finally became law, it was signed by a Republican president and co-sponsored by the Republican Party’s choice to succeed him. Any further campaign-finance legislation similarly requires careful deliberation and working across aisles—not an election-year rush to judgment.

In the end, the Disclose Act appears to be pure politics.

- The leadership is concerned about the upcoming elections and is rushing this bill forward to tilt the playing field in their direction.
- The principal sponsor in the House, Representative Van Hollen, is head of the Democratic Congressional Campaign Committee. The principal sponsor in the Senate, Charles Schumer, held the same position in the Senate until very recently.
- The leadership is attempting to force this legislation through Congress despite knowing that several parts of the legislation raise serious constitutional problems.
- The political, special-interest nature of the legislation is reflected in the recent addition to the bill of the “NRA Exemption.” This ad hoc carve-out is specifically tailored to exempt the National Rifle Association from the bill’s key restrictions and burdens in order to secure passage. This is clear and unconstitutional discrimination in favor of one speaker and against others.