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Note to the Press

# Democracy 21 Summary of DISCLOSE Act of 2012 Introduced by Senator Sheldon Whitehouse

The DISCLOSE Act of 2012 introduced in the Senate by Senator Sheldon Whitehouse requires any “covered organization” which spends $10,000 or more on a “campaign-related disbursement” to file a disclosure report with the Federal Election Commission within 24 hours of the spending, and to file a new report each time an additional $10,000 or more is spent. The FEC must post the report on their website within 24 hours after receiving it.

A “covered organization” includes any corporation, labor organization, section 501(c) organization, Super PAC and section 527 organization. Section 501(c)(3) charitable organizations are prohibited from making campaign-related expenditures and are excluded.

The disclosure report must include the name of the covered organization, the amount of each disbursement of more than $1,000, the election to which the spending pertains, the name of the candidate identified, and a certification by the head of the organization that the disbursement was not coordinated.

If the covered organization paid for the campaign-related disbursement out of a segregated bank account consisting only of funds donated directly to the account (and not transferred to the account by the covered organization), it has to disclose only those donors who gave an aggregate of $10,000 or more to the account since the date of the previous federal general election, the amount of each donation and the aggregate amount given.

If the covered organization paid for the disbursement out of its general treasury, it has to disclose the source of all donations, including dues payments, of $10,000 or more to the organization since the date of the previous federal general election, the amount of each donation and the aggregate amount given. This excludes any funds received in a commercial transaction or in the form of an investment (other than investments by a principal shareholder in an LLC corporation). If a donor restricts his payment to the organization from use for a campaign-related disbursement, and the organization consents to the restriction and segregates the money, the identity of the restricted donor does not have to be disclosed.

A "campaign-related disbursement" includes (1) an independent expenditure, which is defined to include any public communication that contains express advocacy or the functional equivalent of express advocacy, (2) an electioneering communication, which is defined to include any broadcast ad which refers to a federal candidate and is broadcast anytime after January 1 of the election year (in the case of a congressional candidate), or in the period beginning 120 days prior to the first primary or caucus in any State until the date of the general election (in the case of a presidential candidate), or (3) a "covered transfer."

A "covered transfer" is defined to include any transfer or payment of funds by a covered organization to another person if the transferor designates that the funds should be used for a campaign-related disbursement, if the transfer was made in response to a solicitation that the funds are to be used for a campaign-related disbursement, if there were discussions between the transferor and recipient about making a campaign-related disbursement, if the transferor or recipient had made campaign-related disbursements of $50,000 or more in the prior two years, or if the transferor had reason to know the recipient would make campaign-related disbursements of $50,000 or more in the next two years.

This provision is necessary to prevent the actual donors of funds being spent to influence federal elections from being hidden by laundering the funds through third party groups.

If the transferor and recipient are affiliated organizations, the internal transfers between them are not required to be disclosed, but if the recipient receiving the transfer makes a campaign-related disbursement, it has to report both the donors of more than $10,000 to it, as well as the donors of more than $10,000 to the affiliate that made the transfer to it.

This provision eliminates the need to file a lot of unnecessary and meaningless disclosure reports about money moving back and forth between affiliates within an organization – information that is irrelevant to the goals of the disclosure provisions. At the same time, it protects against a donor funneling money through an affiliate to an affiliated organization in order to mask the donor as the actual source of funds spent by the affiliated organization for campaign-related disbursements.

The legislation addresses the problem of untimely and ineffective disclosure by Super PACs that has arisen in the 2012 presidential elections. The problem arose because Super PACs were able to take advantage of the FEC's current reporting requirements in a non-election year to delay reporting their donors for the entire second half of 2011 until the end of January, 2012. This legislation fixes that problem by requiring all outside spending groups, including Super PACs, to report their donors within 24 hours after making each campaign-related expenditure of $10,000 or more.

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