June 12, 2012

Dear Senator:

Democracy 21 joins with many other organizations in supporting S.2219, the DISCLOSE Act of 2012, and strongly urges you to vote for cloture and for passage of the bill. We strongly urge you to oppose any effort to block consideration and debate of the legislation.

Recently the Chamber of Commerce and the National Rifle Association sent letters to the Senate criticizing S. 2219 and expressing their opposition to the bill.

We strongly disagree with their criticisms and their attacks on campaign finance disclosure. Although none of the specific objections stated by either the Chamber or the NRA is valid, it is important to recognize that the real objection of these groups is to *any* disclosure of donors whose funds they are using to finance their campaign-related expenditures.

The Chamber and the NRA simply do not believe that voters are entitled to know the identities of the significant donors financing their campaign activities.

The position of the Chamber and the NRA is in direct contradiction to a fundamental principle of campaign finance laws: citizens have a right to know who is giving and spending money to influence their votes. This principle has governed the campaign finance laws and Supreme Court decisions upholding the constitutionality of disclosure laws for decades.

If you have particular concerns about S.2219, we urge you to discuss possible changes in the bill with the sponsor of the legislation, rather than voting to block the Senate from even considering S.2219.

The DISCLOSE Act is Fully Consistent with the *Citizens United* Decision and other Supreme Court Decisions Upholding Campaign Finance Disclosure Laws

Contrary to the claims of the Chamber and the NRA, the DISCLOSE Act is fully consistent with the view of the Supreme Court in the *Citizens United* case that "transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages." The Court in supporting the need for and constitutionality of campaign finance disclosure, found that disclosure "can provide shareholders and citizens with information needed to hold corporations and elected officials accountable for their positions and supporters."

The Supreme Court in *Citizens United*, by an 8-1 majority, conclusively rejected claims that disclosure of campaign spending is inconsistent with the First Amendment.

The Court concluded that disclaimer and disclosure requirements are constitutional because they serve important governmental interests in "providing the electorate with information about the sources of election-related spending" in order to help citizens "make informed choices in the political marketplace." The Court specifically noted that it had earlier upheld disclosure laws to address the problem that "independent groups were running election-related advertisements while hiding behind dubious and misleading names."

The *Citizens United* decision carries forward the Supreme Court's longstanding support for disclosure laws. In the landmark decision of *Buckley v. Valeo* (1976), the Court upheld the constitutionality of campaign finance disclosure laws, stating:

> [D]isclosure requirements deter actual corruption and avoid the appearance of corruption by exposing large contributions and expenditures to the light of publicity. This exposure may discourage those who would use money for improper purposes either before or after the election. A public armed with information about a candidate's most generous supporters is better able to detect any post-election special favors that may be given in return. 79 And, as we recognized in Burroughs v. United States, 290 U.S., at 548, Congress could reasonably conclude that full disclosure during an election campaign tends "to prevent the corrupt use of money to affect elections." In enacting these requirements it may have been mindful of Mr. Justice Brandeis' advice: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman."

Critics argue that disclosure rules impermissibly "chill" speech. The Supreme Court, however, has rejected this general argument and has held that a disclosure provision would *only* be unconstitutional if a specific organization could establish "a reasonable probability that the group's members could face threats, harassment, or reprisals if their names were disclosed."

Furthermore, the Supreme Court has said that even where a specific group could show such a "reasonable probability," the remedy would be to exempt that specific organization from disclosure; not to strike down the disclosure requirements for all groups.

Disclosure requirements are not invalid because of some general and theoretical concern about "chilling" speech.

Comments and criticism about the campaign finance activities of donors and spenders is precisely the kind of public "accountability" envisioned by campaign finance disclosure laws. The notion that groups may come under public scrutiny and criticisms for their campaign activities does not constitute the kind of "threats, harassment, or reprisals" viewed by the Supreme Court as a sufficient basis to exempt a donor or spender from campaign finance disclosure requirements.

Justice Scalia has strongly rejected the "chilling effect" argument in a concurring opinion in a case that upheld disclosure requirements for ballot measure campaigns. In *Doe v. Reed (2010)*, he stated, "Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."

The Chamber and the NRA are two of the largest and most powerful advocacy groups in the country. The idea that disclosure will result in the intimidation of these groups or their donors is simply not credible. The two groups offer no evidence whatsoever to support their claims. The Supreme Court has made clear that disclosure requirements cannot be avoided on the basis of such unsubstantiated assertions.

The DISCLOSE Act is Evenhanded and Treats All Groups Fairly

Contrary to the claims of opponents, S.2219 is not "aimed" at the suppression of corporate speech and does not prevent any organization from speaking. The disclosure provisions of the legislation apply across-the-board to any group spending more than $10,000 on campaign-related expenditures, regardless of whether these expenditures are made by corporations, labor organizations, conservative groups, progressive groups, pro-Democratic groups or pro-Republican groups.

One frequently repeated and baseless claim is that the DISCLOSE Act is designed to favor labor unions because the bill sets a $10,000 threshold for disclosure of donors to groups making campaign-related expenditures.

This reporting threshold, however, is designed to narrowly tailor the disclosure requirements for all groups which are making campaign-related expenditures and which have a major purpose other than to influence elections. By requiring disclosure only of substantial donors to such groups, the $10,000 threshold balances the interests that such groups have in privacy for their donors with the public's interest in knowing the significant donors financing campaign activities.

Opponents also argue that the exemption in the bill from disclosure for internal transfers between affiliates of an organization is designed to favor unions. This is not true.

In fact, the provision is designed to eliminate the need for all organizations to file unnecessary and meaningless disclosure reports about money moving back and forth within an organization. Such information is irrelevant to the goal of disclosing the true sources that are financing campaign-related expenditures.

Organizations and their affiliates regularly transfer money to each other for multiple reasons that have nothing to do with financing campaign-related expenditures. The bill narrowly tailors the disclosure requirements to information that is relevant to the goals of campaign finance disclosure by exempting these internal organizational transfers from disclosure.

At the same time, the bill protects against the actual donor of a contribution being hidden by giving money to one affiliate of an organization which then transfers the money to another

affiliate that makes campaign-related expenditures. Thus, if a donor gives $50,000 to a state affiliate of an organization which transfers the money to its national organization which then makes campaign expenditures, the legislation does not require the national organization to disclose the transfer from its state affiliate, but it does require the national organization to disclose the identity of the $50,000 donor to the state affiliate and the amount given.

The DISCLOSE Act Does Not Require Disclosure of Membership Lists

When the previous version of the DISCLOSE Act set a lower threshold for disclosing donors, many organizations complained that the lower threshold would impermissibly require disclosure of their membership lists. The complaint was not true then and is not true now. As noted earlier, the $10,000 threshold in the current version of the legislation is intended to ensure that only substantial donors to an organization making campaign-related expenditure are subject to disclosure.

The Supreme Court in *McConnell v. FEC*, 540 U.S. 93 (2003), furthermore, rejected the argument that campaign finance disclosure was similar to the disclosure of membership lists that was struck down in the *NAACP* case. The Court said, "In *Buckley*, unlike *NAACP*, we found no evidence that any party had been exposed to economic reprisals or physical threats as a result of the compelled disclosure." Absent a showing by a specific organization of "a reasonable probability that the group's members could face threats, harassment, or reprisals if their names were disclosed," campaign finance disclosure requirements are constitutional as applied to all groups.

Opponents of the legislation also ignore important provisions of the bill that give organizations and donors the flexibility to limit the disclosure of a donor.

For example, the bill permits an organization to set up a separate bank account to raise money for campaign-related expenditures and to make such expenditures only from that account. If an organization elects that option and makes its campaign-related expenditures from the separate account, only the donors of $10,000 or more to that account are required to be disclosed.

This allows *any donor* who is does not want his or her money to be used for campaign-related expenditures to remain undisclosed.

Similarly, even if the organization does not set up a separate bank account for campaign-related spending, the legislation permits donors who would otherwise be disclosed to designate that their contributions cannot be used for campaign-related expenditures and thereby to remain undisclosed.

Disclaimer Provisions Are Not Unduly Burdensome and Have Been Held Constitutional

Opponents also complain about the disclaimer requirements in the bill which require that a campaign-related ad identify the sponsor of the ad and the largest donors to the ad's sponsor.

Disclaimer requirements, however, provide important information to the public and were upheld by the Supreme Court in *Citizens United.* The Court said that disclaimers "provide the electorate with information and insure that the voters are fully informed about the person or group who is speaking." In order to protect against taking too much time away from an ad, the disclaimer requirements allow an organization to run the list of top donors as a crawl at the bottom of a TV ad, which would not take any time away from the content of the ad. An exemption from disclosing donors is also provided for short radio ads.

In short, the Chamber of Commerce and the NRA do not have valid objections to S.2219 – they are simply opposed to citizens knowing the significant donors whose funds they are using to finance campaign-related expenditures.

This position is indefensible. It is also in direct conflict with decades of established national policy and with Supreme Court precedents that have repeatedly reaffirmed the importance and constitutionality of campaign finance disclosure requirements.

Democracy 21 strongly supports the DISCLOSE Act of 2012 and urges you to vote for cloture on S.2219 and for passage of the legislation.

Sincerely,

/s/ Fred Wertheimer

Fred Wertheimer
President