

## **Voters Kept in Dark on Attack Ads: Bill Would Force Underwriters of Attack Ads to Come Out of the Shadows.**

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### **U.S. Chamber, GOP block election ad transparency bill**

#### **Corporate speech trumps disclosure of donors**

Alexi Giannoulias “can’t be trusted,” the 2010 election ad said. His family’s bank loaned money to mobsters, he accepted an illegal tax break and he even squandered money that families were saving for college.

If the charges were true, the U.S. Senate candidate from Illinois must have been a real creep. But they were bogus. Giannoulias, the Democratic candidate, lost anyway.

His accuser was not his opponent. It was an anonymously funded, pro-Republican nonprofit called Crossroads GPS, a “social welfare” organization that, thanks to the U.S. Supreme Court’s *Citizens United* decision, can accept unlimited donations from corporations, wealthy individuals and unions, and run attack ads.



House Minority Leader Nancy Pelosi of Calif., accompanied by Rep. Chris Van Hollen, D-Md., speak about the DISCLOSE act during a news conference on Capitol Hill in Washington, D.C. Charles Dharapak/AP

In short, it functions just like the better-known super PACs but with a major distinction — it is not required to disclose its donors, despite the high court’s consistent support for disclosure rules

In 2010, legislation introduced by Rep. Chris Van Hollen, D-Md., would require nonprofits that buy political ads to disclose their donors. The bill — fought by the [U.S. Chamber of Commerce](#), the nation's most powerful business lobby — failed. A stripped-down version introduced this year has been blocked by Republicans in both the House and Senate.

The Chamber [claims](#) disclosure would “silence free speech.” Critics say its opposition is more about shielding the business association’s corporate donors from a potential public backlash.

### **Transparency means ‘informed decisions’**

“Disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way,” wrote Justice Anthony Kennedy in his majority opinion in the [Citizens United](#) case. “This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”

But the reality is there is often no transparency in the current system.

Crossroads GPS [spent \\$16 million](#) on “express advocacy” in 2010, more than \$15 million on ads bashing Democrats. That’s far more than any other non-disclosing group, according to the Center for Responsive Politics, a non-partisan, nonprofit group that tracks money in politics.

The outside spending addressed by the high court is in two categories: Independent expenditures and electioneering communications.

An independent expenditure group buys ads that urge voters to support or reject a candidate. Electioneering communications allow the mention of a candidate but stop short of urging a yes or no

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vote. In either case, coordinating the ads with a candidate is prohibited.

## **What DISCLOSE discloses**

The 2010 DISCLOSE Act introduced by Van Hollen contained a number of provisions that were not strictly related to disclosure. For example, it barred campaign contributions from government contractors, foreign-owned businesses and companies that received government bailouts.

Nonprofits were required to report their donors when spending reached a certain level. And it required the group's leaders to appear in a disclaimer approving the message conveyed in the ad.

The Chamber spends the bulk of its money on electioneering advertising. A key provision of the bill would expand the definition of electioneering. Currently, only electioneering advertising made within 30 days of a primary or 60 days of a general election must be reported.

Consequently, there is a disclosure gap.

And even when an ad buy is made within the disclosure period, the Chamber and other groups in the past have not revealed their donors. In [Van Hollen v. Federal Election Commission](#) a judge recently decided that all donors who give more than \$1,000 to electioneering groups must now be disclosed. An appeal of the decision is pending.

In response, the Chamber — which is a nonprofit corporation — announced on May 21 that it would no longer make electioneering ads and switch to independent expenditures so it can continue to keep its donors secret.

In 2010 the Chamber was especially outspoken against regulations on government contractors and [argued](#) the bill unfairly targeted businesses' speech while insulating unions.

Unions also opposed parts of the bill. They were concerned that reporting requirements would pose an unnecessary burden by requiring fund transfers among chapters be reported within 24 hours.

Broadcasters voiced their opposition in 2010, particularly when it came to the provisions expanding the requirement that they offer political airtime at the lowest rate.

## **Clean bill**

The 2012 DISCLOSE Act eliminates almost all those points of contention.

Restrictions on government contractors are gone and unions are subject to the same reporting requirements as the other groups.

Like the first version, DISCLOSE 2.0 requires that once an outside spending group has spent a certain amount, it must report the identity of each contributor who gave \$10,000 or more. Groups must "stand by" their ads, the same way candidates do. And corporations, unions and other organizations that file annual financial reports must include their campaign-related spending.

In 2010, the Chamber was one of 113 organizations to lobby the bill and by far the largest. In 2010, it spent \$100.2 million on lobbying. The 2012 bill hasn't attracted nearly as much attention, due no doubt to its almost certain failure thanks to Republican opposition. The Chamber is again leading the

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fight. It sent a [letter](#), signed by 124 organizations, to the Senate in May voicing its opposition.

Among the signers were the Associated Builders and Contractors and several of its local chapters, Edison Electric Institute and the Wichita Independent Business Association, whose board of directors includes Koch Industries' vice president of government and public affairs, Mark Nichols.

The bill "is designed to chill the political speech of corporations, business interests, and others, while giving labor unions special protections," the letter says. "The bill does not propose genuine reform — its disclosure requirements are transparently political and ultimately unconstitutional."

Chamber spokeswoman Blair Latoff called the bill "politically motivated" and designed "to single out and stifle the speech of ...the business community."

The bill does not ban businesses from election advertising — it only requires them to go public. When asked how DISCLOSE would "stifle" speech, the Chamber did not respond. Advocates for disclosure say the speech issue is a smoke screen.

"By keeping its donors secret, the Chamber prevents the brand names of its members from being associated with policies and politicians that half of the public — their customers — reject," said [Bill Allison](#) of the pro-open-government group the Sunlight Foundation. "The Chamber serves the interests of its members, and in politics, that means anonymity."

### **Speech or secrecy?**

As a tax-exempt trade organization, [the Chamber](#) does not report who its donors are, though filings with the IRS do include contribution totals. In 2010, the Chamber collected \$188 million from contributions alone.

Its 138-member board of directors includes top executives from a cross-section of the largest corporations in America. Their interests include oil and gas, pharmaceuticals, transportation, telecommunications, insurance and finance.

Unions have been much quieter this time around. Bill Samuel, director of government affairs at the AFL-CIO, said they strongly support additional corporate disclosure.

"We're pretty much an open book," Samuel said, referencing the detailed reports on membership, dues, revenue and expenditures that unions file with the Department of Labor. "There's no comparable disclosure for companies."

The nation's best-known defender of individual rights, the [American Civil Liberties Union](#), opposes the bill.

"Anonymity in speech is really critically important," said Michael Macleod-Ball, the ACLU's legislative chief of staff. He said the bill harms groups that are purely involved in policy issues, not electing politicians.

The ACLU runs ads that fall into the electioneering communications category but does not take sides. If the issue at hand is controversial — Don't Ask, Don't Tell, for example — revealing donors could increase the chance of retaliation, MacCleod-Ball said.

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But Richard Hasen, a campaign finance lawyer, [testified](#) before a Senate committee that the bill's high dollar-amount thresholds and the option for nonprofits to create a separate account to preserve the anonymity of donors who do not make election-related contributions provide ample constitutional protections.

"Disclosure laws can prevent corruption and the appearance of corruption ... provide valuable information to voters ... [and] help enforce other campaign finance laws," he said.

### **Social welfare?**

Groups like Crossroads GPS are organized as 501(c)(4)s and known as "social welfare" organizations. They may not make politics their "primary" activity, according to IRS rules.

These 501(c)(4) groups make up an increasing percentage of outside spending.

In the 2010 election, they outspent super PACs by a 3-2 margin, according to a [Center for Public Integrity study](#).

Crossroads GPS, co-founded by Republican operative Karl Rove, is one of the most active nonprofits. In 2011 alone, it raised \$76.8 million, the Center for Public Integrity [has reported](#), far more than the \$46.4 million raised by its sister super PAC [American Crossroads](#) in 2011.

Top Democratic 501(c)(4)s include Priorities USA, affiliated with pro-Obama super PAC [Priorities USA Action](#); American Bridge, affiliated with pro-Democrat super PAC [American Bridge 21st Century](#); and America Votes, which gained prominence from a \$1 million contribution in early May from hedge fund billionaire George Soros.\*

### **GOP opposes DISCLOSE**

DISCLOSE 2012 has gone nowhere.

Senate Minority Leader Mitch McConnell, R-Ky., led the filibuster that doomed the bill in the Senate in 2010. A representative for McConnell would not comment on the 2012 bill despite repeated requests.

While a handful of moderate Republicans, most notably campaign finance reform champion Sen. John McCain, R-Ariz., have considered taking up the bill this year, it's still considered a longshot.

Republican House Speaker John Boehner of Ohio also opposes the bill. His office did not respond to requests for comment for this story, but Boehner said the 2010 version was a "backroom deal to shred our Constitution for raw, ugly, partisan gain."

But in 2007, Boehner said on "Meet the Press" that there should be "full disclosure of all of the money that we raise and how it is spent." And seven years before that, McConnell said on the same show that "Republicans are in favor of disclosure."

Despite numerous requests, Van Hollen, the bill's author, did not grant an interview and instead released a statement through his representative.

"If you have nothing to hide, you have nothing to fear from the DISCLOSE Act 2012."

Disclosure has become a partisan issue — only two out of 114 cosponsors of the 2010 bill in the House were Republicans — then-Rep. Mike Castle, R-Del., and Rep. Walter Jones, R-N.C. This year, not one of the House bill’s 160 co-sponsors or the Senate bill’s 44 co-sponsors is Republican.

[Adam Skaggs](#), counsel at the Brennan Center for Justice, which advocates for campaign finance reform, said that since the 2012 bill is more closely tailored to disclosure and not cluttered with other issues support or opposition among members of Congress should be telling.

“By eliminating some of the provisions that prompted opposition in the first version of the act, the current bill presents members with Congress with a stark choice,” he said. “Do you support transparency in elections or do you not?”

*\*George Soros is the chairman and founder of the Open Society Foundations, which is a financial supporter of the Center for Public Integrity. To learn more about the Center’s funders, please go [here](#).*

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