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## **Summary of Legislation Introduced by Senator Schumer and Representatives Van Hollen and Castle In Response to *Citizens United* Decision**

The legislation introduced by Senator Charles Schumer (D-NY) and Representatives Chris Van Hollen (D-MD) and Mike Castle (R-DE) addresses problems that arise from the Supreme Court's destructive decision in the *Citizens United* case to empower corporations and unions to make unlimited expenditures to influence federal elections and government decisions.

The core provisions of the legislation establish new transparency and accountability requirements for corporations and unions that make expenditures in federal elections. The Schumer and Van Hollen - Castle bills are similar. This is a summary of the Schumer legislation.

### **Comprehensive disclosure by corporations, labor unions, trade associations and non-profit advocacy groups of campaign-related expenditures**

At the heart of the legislation are comprehensive new disclosure requirements for corporations, labor unions, trade associations and non-profit advocacy groups that spend money for independent expenditures or electioneering communications to influence federal elections.

The new disclosure requirements are intended to ensure that there is disclosure not only of the identity of the organization that spends the money for campaign-related ads, but also that there is full disclosure of the true sources of the money used for such ads, even if funds are transferred through conduits or front groups.

The legislation defines corporations, unions, trade associations, non-profit advocacy groups and section 527 groups as "covered organizations" that are required to report their campaign-related spending and, where relevant, the donors who fund the spending.

The legislation defines "campaign-related" spending to include both independent expenditures and electioneering communications. Independent expenditures are defined to include public communications which

contain express advocacy as well as those containing "the functional equivalent of express advocacy" – a term the Supreme Court has used to mean any ad which can be understood by a reasonable person only as advocating the election or defeat of a candidate.

The legislation modifies current law to expand the definition of "electioneering communications" to include any broadcast ad that refers to a federal candidate during the period from 90 days before the candidate's primary through the general election.

At the outset, it is important to understand that any donor to an organization can restrict the funds contributed by that donor from being used for campaign-related expenditures. If such a restriction is made, the donor will not be subject to any disclosure requirements established by this legislation.

Thus, whether a donor is disclosed or not is fully within the control of the donor.

**A "covered organization" that engages in "campaign related" expenditures has the option of setting up a "Campaign-Related Activities Account," which is a separate bank account to be used for purposes of making such expenditures. If the organization sets up such an Account, it must make all campaign-related expenditures from the Account.**

**Covered organizations are not required, however, to set up such an Account and may instead make campaign-related expenditures out of their general treasury funds.**

**If a covered organization does not set up an Account and makes expenditures from its general treasury funds, it is subject to the following disclosure requirements:**

- Once a covered organization makes aggregate disbursements of \$10,000 or more in a calendar year out of its general treasury funds for campaign-related expenditures, the organization is required to file a 24-hour report with the FEC to disclose such disbursements.

The disbursements report must include, in addition to information about its expenditures, identification of all donors of \$1,000 or more of unrestricted funds to the organization's general treasury during the 12 month period prior to the disbursement. As noted above, a donor to a covered organization can "restrict" the funds donated, so that the organization cannot use the funds for campaign-related spending and the donor will not be disclosed.

- Each time the organization makes additional campaign-related disbursements aggregating \$10,000 or more, it is required to file a new 24-hour report disclosing the disbursements and updating the donor information. The updated donor information should include new donors of unrestricted funds aggregating \$1,000 or more since the last report, former donors of less than \$1,000 who have now exceeded an aggregate \$1,000 or more during the same period, and former donors of more than \$1,000, already disclosed, who have made additional donations since the last disbursement report.

**If a covered organization opts to set up a separate Campaign-Related Activities Account, it must make all of its campaign-related expenditures from the Account and is subject to the following disclosure requirements:**

- Once a covered organization makes aggregate disbursements of \$10,000 or more in a calendar year out of its separate Campaign-Related Activities Account for campaign-related expenditures, the organization is required to file a 24-hour report with the FEC to disclose such disbursements.

In addition the report also must disclose all donors of an aggregate of \$1,000 or more to the Account

during the past 12 month period.

- Each time the organization makes additional campaign-related disbursements aggregating \$10,000 or more, it is required to file a new 24-hour report disclosing the disbursements and updating the donor information. The updated donor information should include new donors to the Account of unrestricted funds aggregating \$1,000 or more since the last report, former donors of less than \$1,000 who have now exceeded an aggregate \$1,000 or more during the same period, and former donors of more than \$1,000, already disclosed, who have made additional donations since the last disbursement report.
- **If a covered organization with an Account does not transfer funds aggregating \$10,000 or more from its general treasury funds to the Account, the organization never has to disclose the sources of any of the donors to its general treasury funds. The only donor disclosure required in these circumstances are donations made to the Account aggregating \$1,000 or more.**
- **If a covered organization with an Account does transfer \$10,000 or more from its general treasury funds to the Account, however, then the organization must file a report within 24 hours of the transfer that discloses all of the donors of unrestricted funds aggregating \$10,000 or more to its general treasury during the 12 month period prior to the transfer.**

Thereafter each time the organization transfers an additional \$10,000 or more from its general treasury funds to the Account, the organization is required to file updated disclosure information within 24 hours of making the transfer.

The updated report should include information on all new donors of unrestricted funds aggregating \$10,000 or more to its general treasury since the last transfer report, all previous donors of less than \$10,000 who now have donated an aggregate amount of \$10,000 or more to its general treasury and all donors who had been previously disclosed and have increased the aggregate amount of their donations since the last transfer report.

- **If a covered organization transfers funds to another person for the purpose of making campaign-related expenditures, or is deemed to have made a transfer for such purpose, it is treated as if it made a campaign-related expenditure and is subject to the applicable reporting requirements set forth above.**

A transfer by an organization to another person is deemed to have been made "for the purpose of" making campaign-related expenditures if the transferred funds were solicited from the transferor for that purpose, if the transferor and recipient engaged in substantial discussion about making campaign-related expenditures, if the transferor knew or should have known that the recipient intends to make campaign-related expenditures, or if the transferor or recipient of the transfer made campaign-related expenditures in the current or previous election cycle.

In addition to filing disclosure reports with the FEC, a covered organization is required to include in any periodic reports that the organization already sends to its shareholders, members or donors a list of the campaign-related expenditures the organization has made, the amounts it has spent, and the source of the funds used. In the case of transfers to another person, the covered organization also must disclose the name of the recipient and the date and amount of funds transferred.

If the covered organization has an Internet site, the same information must be posted on its website, with a link from the homepage. In addition, the covered organization is required to post on its website a breakdown by political party of the total amount disbursed in support of and opposition to candidates of each party, and the total amount spent in support of or in opposition to incumbents and challengers.

## **Improved disclaimer requirements on campaign ads**

The legislation requires the CEO of a corporation or head of any other covered organization to personally appear in the organization's independent expenditure or electioneering communication TV ads and take responsibility for the ad by stating that the corporation or other organization approves the message. The same statement must be read by the CEO or head of the organization in a radio ad.

This stand-by-your ad provision is similar to the stand-by-your ad provision that applies to federal candidates.

In addition, the legislation requires the top funder ("significant funder") of a TV or radio ad also to appear in the ad and take responsibility. The "significant funder" is defined as any person or organization who made the largest payment of \$100,000 or more to be used for a specific ad or race, or if there is no such person, then the person or organization who made the largest payment to the organization that is available for use by the organization to pay for its campaign-related spending.

Additionally, for independent expenditure or electioneering communication ads that appear on TV, a covered organization must also list the top 5 funders who provided the largest payments to the covered organization that are available to be used to pay for the ads.

## **Improved limitations on government contractors**

Under current law, government contractors are barred from making contributions to federal candidates. Under existing FEC regulations, they are also barred from making expenditures to influence federal elections.

The legislation provides that contractors who have contracts with a value of \$50,000 or more are prohibited from making independent expenditures or electioneering communications in federal elections. The same restrictions apply to recipients of TARP funds until such funds have been paid back.

## **Expanded restrictions of foreign nationals**

Under current law, foreign nationals are prohibited from making expenditures or contributions in any federal, state or local election. Foreign nationals include foreign countries, foreign individuals and foreign corporations – those organized under the law of a foreign country or with a principal place of business in a foreign country. Foreign nationals, however, do not under current law include domestic U.S. corporations that are owned or controlled by foreign nationals.

The legislation expands the existing definition of a foreign national to include a U.S. corporation in which a foreign national directly or indirectly owns 20 percent or more of the voting shares of the domestic corporation; a U.S. corporation in which foreign nationals constitute a majority of the board of directors; or a U.S. corporation in which one or more foreign nationals have the power to control the decision-making process of the company with respect to the company's interests in the U.S. or its activities in connection with U.S. elections.

In order to ensure compliance with these rules, the legislation requires the CEO of a corporation to file an annual certification with the FEC prior to the corporation making any contribution or expenditure in that year with regard to a U.S. election, attesting that the company is not prohibited from making the contribution or expenditure by the new foreign national rules.

## **Strengthen rules on coordination**

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