



Written by [Bob Adelman](#) on June 18, 2010

Loophole Backfires, Blows up DISCLOSE Act

In their attempt to mitigate negative election-year fallout from the Supreme Court's recent ruling in favor of rights of free speech for everyone in *Citizens United*, Democrats Senator Charles Schumer (New York) and Representative Chris Van Hollen (Maryland) proposed legislation entitled "Democracy is Strengthened by Casting Light on Spending in Elections," or DISCLOSE.



Schumer was very clear that DISCLOSE was carefully crafted to "embarrass companies [inclined to get involved in the fall elections] out of exercising those rights," [according to Kim Strassel](#) in the *Wall Street Journal*. "The bill will make companies 'think twice', [Schumer] rejoiced. 'The deterrent effect should not be underestimated.' " Even though the bill is considered by many to be unconstitutional, the Democrats' "goal here isn't lasting legislation. The goal is to have this [law] in place for this election, when Democrats are at a low point, and when an empowered union base and a silenced corporate presence could make the difference between keeping the House and losing it."

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The bill immediately met resistance from numerous conservative groups, including the National Rifle Association. The bill would require organizations to disclose their top donors if they sponsor political television commercials or pay for mass mailings in the months leading to an election. The NRA initially said the bill "creates a series of byzantine disclosure requirements that have the obvious effect of intimidating speech...[and] attacks nearly all of the NRA's political speech by creating an arbitrary patchwork of unprecedented reporting and disclosure requirements."

Such resistance weakened support for the bill by numerous Democrats running for re-election this fall, and so a remedy was applied: exclude the NRA from those troublesome reporting requirements in exchange for which the NRA would drop all resistance to the bill. After NRA lobbyist Chris Cox [met with](#) Van Hollen, the NRA was "carved out" of the bill.

The outcry reached ear-shattering levels. "The NRA sells out to Democrats on the First Amendment," castigated the *Wall Street Journal*. "Conservatives take on the NRA over [the] deal on [the] disclosure bill," cried the *Washington Post*. RedState.org chimed in: "The National Rifle Association's Excuse



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Holds No Water." A member of the NRA's Board of Directors, Cleta Mitchell, [wrote in the Washington Post](#), that:

For its part, the NRA — on whose board of directors I serve — rather than holding steadfastly to its historic principles of defending the Constitution and continuing its noble fight against government regulation of political speech instead opted for a political deal borne of self-interest in exchange for "neutrality" from the legislation's requirements. In doing so, the NRA has, sadly, affirmed the notion held by congressional Democrats (and some Republicans), liberal activists, the media establishment and, at least for now, a minority on the Supreme Court that First Amendment protections are subject to negotiation. The Second Amendment surely cannot be far behind....

This is not just "disclosure." It is a scheme hatched by political insiders to eradicate disfavored speech. There is no room under the First Amendment for Congress to make deals on political speech, whether with the NRA or anyone else.

In its defense, the NRA's statement was revealing: "The NRA has consistently and strongly opposed any effort to restrict the rights of our four million members to speak and have their voices heard on behalf of gun owners nationwide... We refuse to let this congress impose [the bill's] unconstitutional restrictions on our Association... There are those who say the NRA should put the Second Amendment at risk of a First Amendment principle. That's easy to say unless you have a sworn duty to protect the Second Amendment above all else, as we do."

Once the deal with the NRA was sealed — to exempt that organization from the bill — others began to clamor for exemption, including the Congressional Black Caucus's concerns about the impact the bill would have on the NAACP. Compromise in the bill broadened exemptions to include the AARP, the Sierra Club, and the National Right to Life Committee, in order to soften their opposition to the bill.

Liberal House Democrats complained that the bill was being too soft on the NRA, and that by voting for the bill with the new loophole, they would in essence be supporting the NRA. Bruce Josten, chief lobbyist for the U.S. Chamber of Commerce, held that this whole backroom jousting would turn out to be a "tactical mistake."

I would suggest to you that they [the NRA] have decided that protecting the Second Amendment right is their mission and cutting a deal on the First Amendment to ensure their capacity to protect the Second Amendment was more important to them, the result of which was to toss overboard roughly 100,000 other associations.

On June 17, House Speaker Nancy Pelosi [announced](#) that she was pulling the bill from the floor vote scheduled for the next day due to lack of support.

Photo: Sen. Charles Schumer (D-N.Y.), left, accompanied by Rep. Chris Van Hollen (D-Md.), gestures during a news conference introducing a bill to undo the Supreme Court's Citizens United ruling, Feb. 11, 2010: AP Images



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