The Van Hollen "DISCLOSE ACT"

Democracy Is Strengthened by Casting Light On Spending in Elections Act

TITLE I – REGULATION OF CERTAIN POLITICAL SPENDING

Sec. 101. BAN PAY-TO-PLAY

- **Prevent Government Contractors from Spending Money on Elections.** Government contractors would be barred from making campaign-related expenditures, defined to include independent expenditures and electioneering communications. This is an extension of an existing ban on contributions made by government contractors. A $50,000 contract threshold standard IS included to exempt small government contractors from the expenditure ban.

- **Prevent Corporate Beneficiaries of TARP from Spending Money on Elections.** Corporations that received bailout funding from the federal government should not be permitted to use taxpayer money to influence elections. This section would prohibit bailout beneficiaries from making campaign-related expenditures. Once that money is repaid, however, the restrictions would be lifted.

Sec. 102. PREVENT FOREIGN INFLUENCE IN U.S. ELECTIONS

- While foreign nationals, including foreign corporations (those incorporated overseas), are banned from making contributions or expenditures to influence U.S. elections, the opinion in *Citizens United* created a loophole for spending by domestic corporations controlled by foreign nationals. To close the loophole, the legislation extends the existing prohibition on contributions and expenditures by foreign nationals to include domestic corporations under the following circumstances:

    1. If a foreign national owns 20% or more of voting shares in the domestic corporation, (modeled after the control test in a number of states, including Delaware);
    2. If a majority of the board of directors are foreign nationals;
    3. If a foreign national has the power to direct, dictate, or control the decision-making of the domestic corproation; or
    4. If a foreign national has the power to direct, dictate, or control the activities with respect to federal, state or local elections.

Sec. 103. PREVENT ORGANIZATIONS FROM COORDINATING THEIR CAMPAIGN-RELATED EXPENDITURES WITH CANDIDATES AND PARTIES

- The legislation ensures that corporations and unions are not allowed to coordinate campaign-related expenditures with candidates and parties in violation of rules that require these expenditures to be independent.

    - Current FEC rules bar outside spenders from coordinating with congressional candidates and parties about ads that refer to the candidate and are distributed within 90 days of a primary election or within 90 days of the general election. For Presidential contests, current FEC rules prohibit coordination on ads that reference a presidential candidate in the period beginning 120 days before a state's Presidential primary election and continuing in that state through the general election.

    - This legislation would do the following:
        - For House and Senate races, the legislation would ban coordination between an outside spender and the candidate on ads referencing a Congressional candidate in the time period starting 90 days before the *primary* and continuing through the *general* election. For presidential races, the legislation would ban such coordination during the period from 120 days before the first presidential primary through the general election.
        - For the period outside the window, existing law remains in effect.

Sec. 104. POLITICAL PARTY COMMUNICATIONS

- The legislation provides that any payment by a political party committee for the direct costs of an ad or other communication made on behalf of a candidate affiliated with the party is treated as a contribution to the candidate only if the communication is directed or controlled by the candidate.

- Party-paid communications that are *not* directed or controlled by the candidate are not subject to limits on the party's contributions or expenditures.

TITLE II – PROMOTING EFFECTIVE DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY

The legislation ensures that the public will have full and timely disclosure of campaign-related expenditures (both electioneering communications and public independent expenditures)

made by covered organizations (corporations, unions, section 501(c)(4), and (6) organizations and section 527 organizations).

The legislation imposes disclosure requirements that will mitigate the ability of spenders to mask their campaign-related activities through the use of intermediaries.

It also requires disclosure of both disbursements made by the covered organization and the source of funds used for those disbursements.

SUBTITLE A – REPORTING IMPROVEMENTS TO THE FEC

Sec. 201. INDEPENDENT EXPENDITURES

The definition of an "independent expenditure" is expanded to include both express advocacy and the functional equivalent of express advocacy, consistent with Supreme Court precedent. Additionally, the section imposes a 24-hour reporting requirement for expenditures exceeding $10,000 made more than 20 days before an election, and expenditures exceeding $1000 made within 20 days before an election.

Sec. 202. ELECTIONEERING COMMUNICATIONS

This section expands the definition of "electioneering communications" to include all broadcast ads that refer to a candidate within the period beginning 30 days before a primary election and 120 days before the general election. Any such "electioneering communication" is subject to the disclosure requirements. The section also expands the reporting requirements for electioneering communications to include a statement as to whether the communication is intended to support or oppose a candidate, and if so, which candidate.

SUBTITLE B – EXPANDED REQUIREMENTS FOR DISCLOSURE

Sec. 211. IMPROVED DISBURSEMENT REPORTING REQUIREMENTS

The legislation would require corporations, labor unions, and section 501(c)(4), or (6) organizations—as well as section 527 organizations—to report all donors who have given $1,000 or more if expenditures are made on electioneering communications or $ 600 or more if expenditures are made for independent expenditures, during the past 12 month period if the organization makes aggregate independent expenditures or electioneering communications of $10,000 or more.

If an organization makes a transfer of funds to another person for the purpose of making an independent expenditure or electioneering communication, the organization shall be treated as making an independent expenditure or electioneering communication. A person shall be deemed to have transferred funds for the purpose of making campaign-related expenditures if the funds have been solicited for such purpose, if there have been substantial discussions about such expenditures between the person making the transfer and the person receiving the funds, if the person transferring the funds knows (or should know) of the intent to make campaign-related expenditures by the person receiving the funds or if the person receiving the funds made a campaign-related expenditure in the last election cycle or the current cycle.

Sec. 212. DISCLOSURE OF GENERAL TREASURY FUNDS

If a donor to a covered organization specifies that his donation may not be used for campaign-related activity, the organization is restricted from using the donation for that purpose, and the identity of the donor will not be disclosed.

If a covered organization makes disbursements for campaign-related activity, the CEO must file a statement with the FEC certifying that the disbursements were not made in coordination with a candidate and that the spending has been fully disclosed and made in compliance with law.

Sec. 213. CREATION OF SEPARATE CAMPAIGN-RELATED ACTIVITY ACCOUNT

An organization can establish a separate "Campaign-Related Activity" account to receive and disburse campaign-related expenditures. If the organization establishes such an account, all campaign-related expenditures must be made though the account. Donors to the separate account of $1,000 or more whose funds are spent on electioneering communications and donors of $600 or more whose funds are spent on independent expenditures are subject to disclosure. If an organization has a separate account, then the organization will need to disclose donors to its general fund during the last 12-month period only if it transfers $10,000 or more from its general fund to the separate account. If such a transfer occurs donors of $10,000 or more to the general fund are subject to disclosure if expenditures are made on electioneering communications or $6,000 or more if expenditures are made on independent expenditures. The disclosure of donors to the general fund must be updated each time an organization makes a transfer of $10,000 or more from its general fund to the separate account.

Sec. 214. ENHANCE DISCLAIMERS TO IDENTIFY SPONSORS OF ADS

- **Require Leaders of Corporations, Unions, and Organizations to Identify that they are Behind Political Ads.** If any covered organization (corporation, union,

section 501(c)(4), or (6) organization, or section 527 organization) makes disbursements for an independent expenditure or electioneering communication, the CEO or highest ranking official of that organization will be required to appear on camera to say that he or she "approves this message," just like candidates have to do now.

- **In order to prevent "Shadow Groups", Require Top Donors To Appear in Political Ads They Funded.** In order to prevent individuals and entities from funneling money through shell groups in order to mask their activities, the legislation will include the following requirements:

    - The top funder of the advertisement must also be included in the ad making a stand-by-your-ad disclaimer.

    - The top five donors of non-restricted funds to an organization that purchases campaign-related TV advertising will be listed on the screen at the end of advertisement. This has been used in Washington State and is the model for this section in the legislation.

SUBTITLE C – REPORTING REQUIREMENTS FOR REGISTERED LOBBYISTS

Sec. 221. REQUIRING REGISTRANTS TO REPORT INFORMATION ON INDEPENDENT EXPENDITURES AND ELECTIONEERING COMMUNICATIONS

In an effort to add to the transparency of lobbying activities, all registrants under the Lobbying Disclosure Act must disclose the following information on their periodic lobbying disclosure reports: the date and amount of each independent expenditure or electioneering communication greater than $1,000, and the name of each candidate referred to or supported or opposed.

TITLE III – DISCLOSURE OF CAMPAIGN-RELATED ACTIVITY TO MEMBERS & SHAREHOLDERS

Sec. 301. ENHANCE REQUIREMENTS FOR DISCLOSURE OF POLITICAL EXPENDITURES TO SHAREHOLDERS AND MEMBERS OF COVERED ORGANIZATIONS

All campaign-related expenditures made by a corporation, union, section 501(c)(4), or (6) organization, or section 527 organization must be disclosed on the organization's website with a

clear link on the homepage within 24 hours of reporting such expenditures to the FEC. Additionally, all campaign-related expenditures made by a corporation, union, section 501(c)(4), or (6) organization, or section 527 organization must be disclosed to shareholders and members of the organization in any financial reports the organization already provides on a periodic and/or annual basis to its shareholders or members.

TITLE IV – OTHER PROVISIONS

This Title contains the judicial review, severability, and effective date sections.