July 16, 2012

United States Senate
Washington, DC 20510

Re: ACLU Opposes S. 3369 – The Democracy is Strengthened by Casting Light on Spending in Elections ("DISCLOSE") Act

Dear Senator:

On behalf of the ACLU, a non-partisan organization with over half a million members, countless additional supporters and activists, and 53 affiliates nationwide, we urge you to oppose S. 3369, the Democracy Is Strengthened by Casting Light on Spending in Elections ("DISCLOSE") Act, and to vote "no" on cloture if the bill is presented for consideration on Monday.[1]

The ACLU has been involved in the public debate over campaign finance reform for decades, providing testimony to Congress on these issues regularly and challenging aspects of campaign finance laws in federal court.

We acknowledge that the sponsors of the DISCLOSE Act seek the laudable goal of fair and participatory federal elections. We also appreciate the drafters' efforts to address the ACLU's concerns with previous campaign disclosure legislation. And, we do support numerous campaign disclosure and fair election measures that promote and inform the electorate, including disclosures of corporate political spending to shareholders and rules that provide low-cost airtime to all political candidates.

However, we believe this legislation ultimately fails in its attempts to improve the integrity of our campaigns in any substantial way, while significantly harming the speech and associational rights of Americans. We urge you to oppose S. 3369.

The election of public officials is an essential part of a free society, and campaigns for public office raise a wide range of sometimes competing civil liberties concerns. Any regulation of the electoral and campaign processes

[1] S. 3369, 112th Cong. (2012). S. 3369 is identical to S. 2219, the previously introduced version of the DISCLOSE Act, but removes the disclaimer requirements of 2219 and moves the effective date of the legislation beyond the 2012 elections. H.R. 4010 resembles in significant part S. 2219, and the comments in this letter apply to the disclosure provisions of all three pieces of legislation. Please also note our letter to the Senate Rules and

must be fair and evenhanded, understandable and not unduly burdensome. It must assure integrity and inclusivity, encourage participation and protect privacy and rights of association while allowing for robust, full and free discussion and debate by and about candidates and issues of the day. Measures intended to root out corruption should not interfere with freedom of expression by those wishing to make their voices heard, and disclosure requirements should not have a chilling effect on the exercise of rights of expression and association, especially in the case of controversial political groups.

Small donations to campaigns—and contributions of any size to political communications that are made without any coordination with a candidate's campaign—have not been shown to contribute to official corruption.[2] Although the ACLU supports measures to guarantee the independence of groups making independent expenditures, we are concerned that heavy-handed regulation will violate the anonymous speech rights of individuals and groups that associate with these independent expenditure groups, subjecting them to harassment and potentially discouraging valuable participation in the political process.

The scope of the DISCLOSE Act, of course, extends beyond regulating the “Super PACs” that are currently dominating the news, and have surely prompted this measure. The DISCLOSE Act, as written, would infringe on the anonymous speech rights of donors to groups like the ACLU, which engage in non-partisan issue advocacy that would be covered by the disclosure requirements of the legislation under consideration.

We offer comments focusing on two areas.

1.

of its donors. Such organizations would face two unsatisfactory choices: protect the privacy of their donors by refraining from issue advocacy or give up the privacy of their donors and place at risk the opportunity for additional donations by those supporters. Either way, this bill would have a deeply chilling effect on political speech about pending legislation for more than 40% of each Congress.

For communications mentioning a presidential or vice presidential candidate, the period would extend from 120 days before the primary or caucus in individual state, which would radically extend the heightened disclosure period in numerous jurisdictions. Under current law, the electioneering communications period in Iowa—the first state in the Republican presidential nominating process—started on December 4, 2011, 30 days prior to the caucus on January 3, 2012. Under the DISCLOSE Act, if it were to have been in effect this campaign season, with respect to the presidential or vice presidential candidate, that disclosure period for presidential candidates would have extended all the way back to September 5, 2011, and would continue unabated until the election.

Accordingly, pure non-partisan issue advertising th

Even with a $10,000 trigger, the present exceptions in the DISCLOSE Act may still leave the door open to disclosure when a donor had no intent that a gift be used for political purposes.[8] It is both impractical and unfair to hold contributors responsible for every advertisement that an organization publishes, and even donors who give more than $10,000 may be small relative to the size of the covered organization's donor base as a whole.

Any effort to increase voter awareness of an organization's funding must respect the freedom of private association that the Supreme Court recognized in NAACP v. Alabama.[9] In that case, the Supreme Court sternly rebuked government-mandated membership disclosure regimes as thinly veiled attempts to intimidate activist organizations that worked by instilling a fear of retaliation among members of the activist group. The lesson of that time must not be lost simply because the causes of today are different from those of the civil rights era. tro9(a)-6.8658( )-0.479431(o)-0.956417(r