The DISCLOSE Act: Overview and Analysis

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Summary

As it has periodically for decades, Congress is again considering how or whether to regulate campaign financing. The latest iteration of the debate over which kinds of groups should be permitted to spend funds on political advertisements, and how so, was renewed on January 21, 2010, when the Supreme Court of the United States issued its decision in *Citizens United v. Federal Election Commission*. Following *Citizens United*, corporations and labor unions may now fund political advertisements explicitly calling for election or defeat of federal candidates—provided that the advertisements are not coordinated with the campaign. The legislative response receiving the most attention to date—and the emphasis of this report—is the DISCLOSE ("Democracy is Strengthened by Casting Light on Spending in Elections") Act. The House measure, H.R. 5175, sponsored by Representative Van Hollen, was reported, as amended, by the Committee on House Administration on May 25, 2010. The House of Representatives passed the bill, with additional amendments, on June 24, 2010, by a 219-206 vote. Senator Schumer's companion legislation that was first introduced in the Senate, S. 3295, is generally similar to the bill passed by the House. The same is true for S. 3628, a second measure—apparently intended to supersede S. 3295—that Senator Schumer introduced on July 21, 2010. There are, however, some important differences across the three bills, as discussed in this report.

The bills appear to be aimed primarily at non-campaign actors, particularly corporations, unions, and tax-exempt organizations. The bills propose a combination of disclosure provisions and disclaimer provisions (which are sponsorship information included within a communication) that would apply to these entities and are designed to give regulators and the public additional information about political advertising that could emerge following *Citizens United*. The legislation also prohibits certain government contractors, foreign-controlled or owned corporations (including some U.S. subsidiaries of foreign corporations), and prospective recipients of Temporary Asset Relief Program (TARP) funds from making certain political expenditures.

The bills do not increase contribution limits for candidate campaigns; they also generally do not address other political committees—parties and PACs. A notable exception would permit parties to make additional coordinated expenditures supporting their candidates. This is the only instance in which the bills explicitly allow for more political spending than would be possible under the status quo.

This report provides an overview and analysis of (1) major policy issues addressed in the DISCLOSE Act, which responds to *Citizens United*; (2) major provisions of H.R. 5175, as passed by the House, and S. 3295 and S. 3628 as introduced in the Senate, versus current federal law; and (3) issues for congressional consideration and potential implications of enacting or not enacting the DISCLOSE Act.

The report will be updated as events warrant.

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Introduction

Political information—particularly political advertising—has been at the heart of American campaigns and elections for more than a century. Throughout the last century, candidates, parties, and interest groups have competed to make their case to voters in the hopes of winning elections and shaping policy debates. At the same time, Congress, regulatory agencies, and the courts have wrestled with how much, and what kind, of information should be available to the public about the sources of those political messages. Questions have also emerged about whether certain actors, such as corporations and unions, should be permitted to participate in elections and other political debates to the same extent as voters. Modern campaign finance policy and law, which emerged in the 1970s, but which built on reforms first pursued in the early 1900s, has responded with a combination of provisions designed to restrict the amounts and sources of funds in federal elections on one hand, and documenting the sources and amounts of funds that are permitted on the other.[1]

Political advertising has both enabled the public to become more informed about campaigns and policy contests, and, perhaps, made it more challenging for the electorate and policymakers to keep track of the various players and issues involved in political debates. This has been particularly true since the 1960s, when broadcast political advertising first became prominent, political professionals began to specialize in media production, and the electorate increasingly turned to television for information.[2]

The latest iteration of the debate over which corporations, unions, and other groups should be permitted to spend funds on political ads, and how so, was renewed on January 21, 2010, when the U.S. Supreme Court issued its highly anticipated decision in *Citizens United v. Federal Election Commission (FEC)*.[3] The DISCLOSE Act, "Democracy is Strengthened by Casting Light on Spending in Elections," which the Committee on House Administration reported, as amended, on May 25, 2010, is the most prominent legislative response to *Citizens United* to date. As with the case itself, the DISCLOSE Act is particularly relevant for the ongoing policy debate surrounding political advertising and its transparency.

This report is designed to provide an overview and analysis of (1) major policy issues addressed in *Citizens United* and the DISCLOSE Act; (2) major provisions of H.R. 5175, S. 3295, and S. 3628 compared with current federal campaign finance law, as shown in **Table 1** at the end of this report; and (3) selected issues for congressional consideration and potential implications of enacting or not enacting the DISCLOSE Act. Legislative developments surrounding the DISCLOSE Act have generally unfolded quickly since the House and Senate bills were

[1] On the development of federal campaign finance policy and law, see, for example, Kurt Hohenstein, *Coining Corruption: The Making of the American Campaign Finance System* (DeKalb, IL: Northern Illinois University Press, 2007); Robert E. Mutch, *Campaigns, Congress, and Courts: The Making of Federal Campaign Finance Law* (New York: Praeger, 1988); Raymond J. La Raja, *Small Change: Money, Political Parties, and Campaign Finance Reform* (Ann Arbor, MI: University of Michigan Press, 2008); and John Samples, *The Fallacy of Campaign Finance Reform* (Chicago: University of Chicago Press, 2006).

[2] See, for example, Stephen Ansolabehere, Roy Behr, and Shanto Iyengar, *The Media Game: American Politics in the Television Age* (New York: Macmillan, 1993); and *Crowded Airwaves: Campaign Advertising in Elections*, eds. James A. Thurber, Candice J. Nelson, and David A. Dulio (Washington: Brookings Institution Press, 2000).

[3] 130 S. Ct. 876 (2010).

introduced. As such, this report will be updated periodically to reflect recent developments and emerging issues.[4]

Evolution of Policy and Legal Issues

Citizens United is significant because of its potential to change the ways in which corporations, unions, and tax-exempt organizations participate in American elections. Although restrictions on those actors have evolved over time, corporations, unions, and certain tax-exempt organizations were largely banned from spending treasury funds in federal elections for decades. As a result of *Citizens United,* these groups are permitted to use general treasury funds to make *independent expenditures,* which are defined as communications "expressly advocating the election or defeat of a clearly identified candidate" and that are not coordinated with any candidate or party,[5] and *electioneering communications,* which are defined as broadcast, cable or satellite transmissions that refer to a clearly identified federal candidate, aired within 60 days of a general election or 30 days of a primary.[6] Corporations and unions are still subject to the prohibition on using general treasury funds to make contributions to candidates and political parties.[7]

The 1907 Tillman Act, [8] which is considered to be the first major federal campaign finance law, prohibited corporations from making contributions to political parties. With the 1947 Taft-Hartley Act,[9] Congress expanded the prohibition to include corporate contributions to both parties and candidates, as well as expenditures in federal elections. Taft-Hartley also included labor unions in the prohibition. The early prohibitions on corporate and labor union treasury funded contributions and expenditures were included in the first modern federal campaign finance law, the Federal Election Campaign Act of 1971, also known as FECA. [10] The prohibitions are codified at 2 U.S.C. § 441b. In an exception to the prohibition on corporate and union treasury spending, FECA allows for the creation of *separate segregated funds* or *political action committees*, also known as *PACs*. Specifically, corporations and unions can use their treasury funds to establish, operate and solicit voluntary, limited contributions to their PACs.[11] These voluntary PAC donations can then be used to contribute to federal campaigns or to make expenditures that expressly advocate election or defeat of federal candidates.

In the 1976 landmark Supreme Court decision, *Buckley v. Valeo*,[12] the constitutionality of many provisions in FECA was challenged. This case is important because it established the framework

[4] This report does not provide a constitutional analysis and does not address all policy or legal factors that might be relevant for Congress. For analysis of the constitutionality of possible legislative responses to *Citizens United*, see CRS Report R41096, *Legislative Options After Citizens United v. FEC: Constitutional and Legal Issues*, by (name red acted) et al. For analysis of the policy implications of various legislative options, see CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by (name redacted).

[5] 2 U.S.C. § 431 (17).

[6] 2 U.S.C. § 434(f)(3).

[7] 2 U.S.C. § 441b(a).

[8] 34 Stat. 864.

[9] 61 Stat. 136.

[10] Codified as amended at 2 U.S.C. § 431 *et seq*.

[11] 2 U.S.C. § 441b(b)(2)(C).

[12] 424 U.S. 1 (1976).

for constitutional analysis of campaign finance regulation. In *Buckley*, the Court upheld reasonable contribution limits, invalidated certain expenditure limits, and upheld reporting and disclosure requirements. In addition, the Court created the distinction between *issue advocacy* and *express advocacy*, finding that a communication could be regulated if it contained words express advocacy of the election or defeat of a candidate, which includes words such as "vote for" or "vote against." By contrast, such ads could not be regulated if they only contained general public policy messages that fell short of calling for election or defeat of candidates, sometimes referred to as *issue advocacy*. A generation would pass between the enactment of FECA and the next time that Congress would again enact major campaign finance legislation—the Bipartisan Campaign Reform Act of 2002 (BCRA)—but political advertising and the funding sources for that advertising remained prominent during both legislative debates.

As the legislation that became BCRA was being debated in the late 1990s and early 2000s, a chief concern surrounding issue advocacy was whether the ads were actually about public policy issues—as proponents of the advertisements suggested—or whether they were really messages designed to encourage votes for or against candidates within in the context of ads that were only nominally related to public policy.[13] In an effort to restrict issue advocacy, BCRA created a new concept within FECA known as *electioneering communications* in order to regulate messages that might affect elections, but did not expressly advocate for the election or defeat of a clearly identified federal candidate. Importantly, BCRA prohibited corporations and unions from using general treasury funds to pay for electioneering communications, meaning that potentially any ad that even mentioned a political candidate during pre-election periods would have to be paid for with PAC funds or not aired.

In 2007, in *FEC v. Wisconsin Right to Life, Inc.*,[14] the Supreme Court limited the application of the prohibition, thereby easing some restrictions on corporate- and union-funded ads that would otherwise be classified as electioneering communications. As a result of the Court's ruling, if an advertisement could reasonably be interpreted as something other than calling for a vote for or against a candidate, it could not be prohibited. While this ruling limited the application of the electioneering communication prohibition, it did not expressly overrule it.

Citizens United v. Federal Election Commission

Citizens United, a corporation exempt from taxes under Internal Revenue Code (IRC) § 501(c)(4), produced a documentary about a presidential candidate, then-Senator Hillary Clinton. The group released the film in theaters and on DVD, and planned to make it available through video-on-demand and to fund broadcast and cable television advertisements promoting the movie. In *Citizens United v. Federal Election Commission (FEC),*[15] the U.S. Supreme Court considered to what extent the organization was subject to the federal prohibitions on corporate treasury

[13] For a historical overview, see, for example, Anthony Corrado et al., *The New Campaign Finance Sourcebook* (Washington: Brookings Institution Press, 2005), pp. 35-47.

[14] 551 U.S. 449 (2007). For additional discussion, see CRS Report RS22687, *The Constitutionality of Regulating Political Advertisements: An Analysis of Federal Election Commission v. Wisconsin Right to Life, Inc.*, by (name red acted); and CRS Report RL34324, *Campaign Finance: Legislative Developments and Policy Issues in the 110th Congress*, by (name redacted).

[15] 130 S. Ct. 876 (2010). For additional discussion, *see* CRS Report R41045, *The Constitutionality of Regulating Corporate Expenditures: A Brief Analysis of the Supreme Court Ruling in Citizens United v. FEC*, by (name red acted).

funding of independent expenditures, electioneering communications, and related reporting requirements.

On January 21, 2010, the Supreme Court issued its long-awaited ruling in this case, and invalidated the prohibition on corporations and labor unions using their general treasury funds to make independent expenditures and electioneering communications. The Court determined that these prohibitions constitute a "ban on speech" in violation of the First Amendment.[16] In so doing, the Court also overturned its 1990 ruling in *Austin v. Michigan Chamber of Commerce*,[17] which had upheld restrictions on corporate-funded independent expenditures, finding that it provided no basis for allowing the government to limit such independent expenditures. The Court also overturned the portion of its decision in *McConnell v. FEC*[18] upholding the facial validity of the prohibition on electioneering communications in BCRA, finding that the *McConnell* Court relied on *Austin.*[19]

The Court in *Citizens United*, however, upheld the disclaimer (which is sponsor information included within a communication) and disclosure requirements for electioneering communications as applied to the documentary. These requirements, the Court held, could be applied to the film and related advertisements that Citizens United had produced.[20] According to the Court, while they may burden the ability to speak, disclaimer and disclosure requirements "impose no ceiling on campaign-related activities."[21]

It does not appear that the Court's ruling in *Citizens United* affects the validity of Title I of BCRA,[22] which generally bans the raising of unregulated, also known as "soft," money by national parties and federal candidates or officials, and restricts soft money spending by state parties for "federal election activities." Furthermore, *Citizens United* does not appear to affect the ban on corporate or union *contributions* to political candidates. As a consequence of *Citizens United*, federal campaign finance law does not limit corporate and labor union treasury funding for independent expenditures and electioneering communications. Corporations and unions may still establish PACs, but are only required to use PAC funds in order to make contributions to candidates, parties, and other political committees.

Congressional Response

Given these developments, questions have emerged about how political advertising might be affected by the Court's decision in *Citizens United* and whether the airwaves will be flooded with corporate and labor union express advocacy.[23] Similar questions have arisen about the extent to

[16] *Id.* at 898.

[17] 494 U.S. 652 (1990).

[18] 540 U.S. 93 (2003).

[19] *See* Citizens United, 130 S. Ct. at 912-14 . For further discussion of *McConnell v. FEC* and *Austin v. Michigan Chamber of Commerce, see* CRS Report RL30669, *The Constitutionality of Campaign Finance Regulation: Buckley v. Valeo and Its Supreme Court Progeny*, by (name redacted).

[20] *See id.* at 913-15.

[21] *Id.* at 914 (quoting Buckley v. Valeo, 424 U.S. 1, 64 (1976)).

[22] *See* 2 U.S.C. § 441i(a).

[23] For an overview of the questions and points of debate referenced in this section, see, for example U.S. Congress, House Committee on House Administration, *DISCLOSE Act*, report to accompany H.R. 5175, 111th Cong., 2nd sess., (continued...)

which the Court's decision might lead to increased campaign activity by tax-exempt organizations, particularly § 501(c)(4) social welfare organizations and § 501(c)(6) trade associations. Many of the these organizations are incorporated, and thus, prior to *Citizens United*, were generally prohibited from using their treasury funds for independent expenditures and electioneering communications.[24] Additionally, all § 501(c) organizations, regardless of whether they were incorporated, could not serve as conduits for corporate or labor union treasury funds to fund independent expenditures and electioneering communications. In light of the Court's decision in *Citizens United*, some are expecting increased campaign activity by tax-exempt organizations. Additionally, some have expressed concern that organizations might be used as shadow groups—groups to which corporations, other entities, and individuals might give funds to engage in campaign activity with little or no public disclosure.

Because this is the first time in modern history that corporate and union independent expenditures have been permitted at the federal level, it remains to be seen how much additional money, if any, might flow into the political system. A more complete understanding of how *Citizens United* will affect the political environment, including campaign spending, will likely be unavailable until after the 2010 election cycle, at the earliest. Proponents of legislative action have, nonetheless, argued that preemptive legislation is necessary to avoid or at least document an expected onslaught of new political advertising.

Legislative Action on the DISCLOSE Act Thus Far

Legislative responses to *Citizens United* began developing immediately after the January 21 ruling. More than 40 bills that are potentially relevant have been introduced in the 111th Congress.[25] The primary focus has been on the DISCLOSE Act. Representative Van Hollen introduced the House measure, H.R. 5175, on April 29, 2010. Senator Schumer introduced the initial Senate version, S. 3295, on April 30, 2010. Senator Schumer introduced S. 3628, a second version of the DISCLOSE Act—apparently intended to supersede the other Senate measure—on July 21, 2010. S. 3628 was placed on the Senate calendar, rather than being referred to committee. The measure would, therefore, rapidly become available for floor consideration.

Although committees in both chambers have held hearings on *Citizens United*, the House has largely focused on the DISCLOSE Act rather than other legislation.[26] Both the Committee on

(...continued)

May 25, 2010, H.Rept. 111-492 (Washington: GPO, 2010).

[24] An exception existed for *qualified nonprofit corporations*, which were defined as a § 501(c)(4) corporation meeting the following criteria: (1) its only express purpose is the promotion of political ideas;v44 (2) it cannot engage in business activities; (3) it has no shareholders or other persons with an ownership interest or claim on the organization's assets or who receive any benefit from the corporation that is a disincentive for them to disassociate themselves from the corporation's position on a political issue; and (4) it was not established by and does not accept donations from business corporations. 11 C.F.R. § 114.10(c). The regulatory criteria for "qualified nonprofit corporations" is based on the U.S. Supreme Court ruling in *FEC v. Massachusetts Citizens for Life, Inc. (MCFL)*, 479 U.S. 238 (1986), holding that the FECA prohibition on corporations using their treasury funds to make independent expenditures could not constitutionally be applied to certain non-profit corporations.

[25] See CRS Report R41054, *Campaign Finance Policy After Citizens United v. Federal Election Commission: Issues and Options for Congress*, by (name redacted).

[26] Thus far, the Senate Committee on Rules and Administration and Committee on the Judiciary have both held *Citizens United* hearings, although those hearings did not address specific legislation per se.

House Administration and House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties held hearings to assess the *Citizens United* ruling on February 3, 2010. The Committee on House Administration held two hearings on H.R. 5175 specifically, on May 6, 2010, and May 11, 2010. The committee held a markup on May 20, 2010, when H.R. 5175 was ordered favorably reported, as amended.[27] After the House Administration Committee reported[28] an amended version of H.R. 5175 on May 25, the House of Representatives passed the bill, with additional amendments, on June 24, 2010, by a 219-206 vote.[29]

The versions of the bill as introduced in the House and as passed by the House were generally similar. There were, however, some notable differences. In particular, the House-passed measure modified the bill to

- raise the threshold for prohibiting expenditures by government contractors from contracts valued of at least $50,000 to contracts of at least $10 million;
- clarify that Internet communications are generally not subject to FECA's disclosure and disclaimer requirements, except for paid political advertising;
- require that independent expenditures and electioneering communication reports be filed electronically and in a format that permits sorting and searching data (for reports with at least $10,000 in expenditures); and
- require automated political telephone calls (*robo calls*) to include "stand-by-your-ad" disclaimers.[30]

Comparing the House and Senate Bills

Provisions in H.R. 5175 as Passed by the House, S. 3295 as Introduced, and S. 3628 as Introduced

Despite some differences (discussed below), these versions of the DISCLOSE Act would generally

- expand the current definitions of *independent expenditure* and *electioneering communication*, thereby mandating expanded disclosure and disclaimer requirements for certain political communications run by corporations, unions,

[27] The Committee reported the bill on May 25, *see* U.S. Congress, House Committee on House Administration, *DISCLOSE Act*, report to accompany H.R. 5175, 111th Cong., 2nd sess., May 25, 2010, H.Rept. 111-492 (Washington: GPO, 2010). Also in the House, on March 11, the Committee on Financial Services, Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, held a hearing addressing corporate governance and shareholder protection after *Citizens United*. In addition to exploring general themes, various legislative proposals, including Representative Capuano's Shareholder Protection Act (H.R. 4790), were discussed. At the May 20, 2010, Committee on House Administration markup, Rep. Capuano initially offered the Shareholder Protection Act as an amendment to the DISCLOSE Act. He ultimately withdrew the amendment, saying that it would be pursued separately.

[28] U.S. Congress, House Committee on House Administration, *DISCLOSE Act*, report to accompany H.R. 5175, 111th Cong., 2nd sess., May 25, 2010, Rept. 111-492 (Washington: GPO, 2010).

[29] "Democracy is Strengthened by Casting Light on Spending in Elections Act," House vote 391, *Congressional Record*, daily edition, vol. 156 (June 24, 2010), p. H4828.

[30] For additional discussion of automated political calls, see CRS Report RL34361, *Automated Political Telephone Calls ("Robo Calls") in Federal Campaigns: Overview and Policy Options*, by (name redacted) and (name redacte d).

and certain tax-exempt § 527 and § 501(c) organizations (*covered organizations*), and broadening the kind of communications that may be subject to FECA prohibitions;

- require *covered organizations* to report to the FEC information about their donors (including transfers) and spending for certain independent expenditures and electioneering communications;
- require corporate chief executive officers or other high-ranking officials in *covered organizations* to state their approval for advertising content, similar to current "stand by your ad" requirements for candidate ads;
- prohibit certain government contractors from making independent expenditures and electioneering communications in federal elections; prohibit TARP recipients from making contributions, independent expenditures, and electioneering communications in federal elections; and prohibit corporations subject to certain control or ownership by foreign nationals (e.g., U.S. subsidiaries of foreign corporations) from making contributions, independent expenditures, and electioneering communications in federal, state, and local elections; and
- remove existing limits on coordinated party expenditures if a candidate or candidate campaign does not control the expenditure.

Differences Between the House-Passed and Senate-Introduced Measures

Despite the general similarities discussed above, there are some important differences between the version of the DISCLOSE Act passed by the House and the two introduced in the Senate. Major differences between the House and Senate bills include the following provisions.

- The two Senate bills contain lengthy findings sections. H.R. 5175 as introduced and reported from the Committee on House Administration contained similar findings, but the relevant section[31] was omitted from the version of the bill passed by the House.
- The bills contain different thresholds for restricting independent expenditures and electioneering communications by government contractors. S. 3295 would bar such expenditures for entities holding contracts of at least $50,000.[32] H.R. 5175 as passed by the House would set the threshold contract value at $10 million, as would S. 3628.
- The bill passed by the House also contains a restriction on Outer Continental Shelf oil and gas lessees not found in the Senate bill. The House bill would prohibit entities holding or negotiating these leases from making contributions, independent expenditures, and electioneering communications in federal elections. Neither Senate measure contains such a provision.

[31] H.R. 5175, as introduced and as reported from the Committee on House Administration, § 2.

[32] The House bill also initially contained a $50,000 threshold, which was increased to $7 million in the version reported by the Committee on House Administration, and then to $10 million in the manager's amendment approved by the House.

- The bills would redefine *foreign nationals*, who are restricted from making contributions or expenditures in U.S. elections, differently. All three measures would expand the current *foreign national* definition to include certain foreign-controlled U.S. corporations, but H.R. 5175 and S. 3628 contain additional prohibitions on entities owned by or under control of foreign governments or foreign-government officials.
- Unlike H.R. 5175 and S. 3628, S. 3295 would revise the lowest unit charge (*LUC*, also called the *lowest unit rate*). Currently, the LUC essentially permits candidate committees to purchase preemptible broadcast advertising time at the cheapest price offered to commercial advertisers for comparable time.[33] In addition to other revisions, S. 3295 would bar preemption of LUC ads (unless beyond a broadcaster's control) and would extend the rate to national party committees in some circumstances.
- Both Senate bills would require Senate political committee[34] reports to be filed electronically and directly with the Federal Election Commission (FEC) rather than with the Secretary of the Senate. Senate campaign committees, party committees, and PACs currently are not required to file campaign finance reports electronically.[35] The House bill does not address these provisions.
- H.R. 5175, as passed by the House, excludes § 501(c)(3) organizations and certain large § 501(c)(4) organizations from the disclosure and disclaimer provisions.

Table 1 at the end of this report and the following discussion provide additional detail.

Potential Implications and Considerations for Congress

General Considerations

As Congress evaluates the DISCLOSE Act, several factors could be relevant. It could first be useful to consider what the bill would and would not do. In short, the DISCLOSE Act's provisions are essentially tailored to political advertising—the main policy issue raised by *Citizens United*. In brief, the DISCLOSE Act appears aimed at documenting additional political advertising in general, and restricting it where potential corruption might occur in specific circumstances. Nonetheless, the disclosure provisions would not necessarily affect political spending per se, nor would they necessarily deter those entities that wished to call for election or defeat of federal candidates. As such, the bill would not necessarily ensure an equal playing field among various political advertisers—including campaigns—nor could it necessarily do so.

[33] 47 U.S.C. § 315(b).

[34] *Political committees* include candidate committees, party committees, and political action committees (PACs).

[35] 2 U.S.C. § 432(g). For additional discussion, see CRS Report R40091, *Campaign Finance: Potential Legislative and Policy Issues for the 111th Congress*, by (name redacted).

In general, the bills would broadly apply additional disclosure and disclaimer provisions to entities making independent expenditures and electioneering communications, as defined in the bills. Corporations, unions, and certain tax-exempt § 501(c) and § 527 organizations would all be subject to the disclosure and disclaimer provisions—provided that their activities met the financial and time thresholds required to classify their communications as independent expenditures or electioneering communications. On the other hand, the bills' restrictions on political expenditures apply only to specific kinds of organizations—namely those government contractors, entities subject to foreign control, or TARP recipients falling under the DISCLOSE Act's provisions barring certain political expenditures.

The bills would not, however, directly affect candidate campaigns in most cases. Indeed, the provisions of the bills appear to be aimed primarily at non-campaign actors, particularly corporations, unions, and tax-exempt organizations. The bills do not increase contribution limits for candidate campaigns; they also generally do not address other political committees—parties and PACs. A notable exception, discussed below, would permit parties to make additional coordinated expenditures supporting their candidates. This is the only instance in which the bills explicitly allow for more political spending than would be possible under the status quo.

In addition to the general policy approaches described above, specific provisions in the legislation could be the subject of debate during House and Senate consideration of the DISCLOSE Act. Because the effects of *Citizens United* will be unclear until at least the conclusion of the 2010 election cycle, and because of the quickly evolving debate in Congress, all the bills' major implications cannot be predicted. The following sections discuss some of the potential implications of the bill, which Congress may wish to consider when evaluating the legislation. As noted previously, other issues may also be relevant; additional analysis will be included in future updates to this report as developments warrant.

Maintaining the Status Quo

If Congress chooses to maintain the status quo by not enacting a legislative response, some argue that certain spending by corporations, unions, and tax-exempt organizations to influence elections could go undocumented under current campaign finance law. In particular, it is possible that under certain circumstances, undisclosed funds could be transferred from one organization to another for the purpose of funding independent expenditures or electioneering communications. Those organizations that the bill proposes to prohibit making expenditures, such as certain U.S. subsidiaries of foreign corporations, would also be free to fund advertising as they saw fit. On the other hand, if substantial additional spending following *Citizens United* does not occur, it is possible that additional legislative action is unnecessary. In addition, some might contend that existing law is sufficient to cover many of the topics addressed in the DISCLOSE Act.[36]

[36] See, for example, Letter from Joan D. Aikens, et al., Former Members of the Federal Election Commission, to Reps. Robert Brady and Dan Lungren, Committee on House Administration, May 19, 2010, http://www.campaignfreedom.org/docLib/20100519_DISCLOSEcomments05192010.pdf.

Modifying the Definitions of Independent Expenditures and Electioneering Communications

As noted previously, now that corporations and unions are free to use general treasury funds for independent expenditures and electioneering communications, the legislation proposes to document such spending through disclosure and disclaimer requirements—and to prohibit some entities from making such expenditures. The activities to which these requirements would apply depend largely on how key terms are defined. Importantly, the bills would broaden the definitions of independent expenditures and electioneering communications, thereby expanding the scope of FECA's regulation.

Specifically, the bills would expand the definition of *independent expenditure* to include an expenditure "that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved mentions a candidacy, a political party, or a challenger to a candidate, or takes a position on a candidate's character, qualifications, or fitness for office."[37] In other words, it is possible that an advertisement could be subject to DISCLOSE Act regulation as an independent expenditure even if it does not explicitly call for election or defeat of a clearly identified candidate if the ad can reasonably be interpreted only as advocating election or defeat of a candidate. In addition, the bills would increase the period (from 60 to 120 days for the House bill and S. 3628, and from 60 to 90 days for S. 3295) prior to general election in which communications are treated as electioneering communications. These provisions are noteworthy because they would affect the kind of political advertising subject to regulation under the DISCLOSE Act and, by extension, other provisions in FECA.

Entities Covered by the Disclosure and Disclaimer Provisions

The bills' disclosure, disclaimer, and shareholder/member reporting requirements would apply to *covered organizations*, which would be defined as corporations, labor organizations, tax-exempt § 501(c)(4), (c)(5), and (c)(6) organizations,[38] and § 527 political organizations that are not political committees for purposes of FECA.[39] H.R. 5175, as passed by the House, and S. 3628 would

[37] DISCLOSE Act, § 201.

[38] Section 501(c)(4) organizations include social welfare organizations; § 501(c)(5) describes labor, agricultural and horticultural organizations; and § 501(c)(6) organizations include trade associations.

[39] IRC § 527 provides tax-exempt status to *political organizations*, which are entities or funds that are organized and operated primarily to influence "the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors.... " Under FECA, *political committee* is defined to include "any committee, club, association, or other group of persons which receives contributions aggregating in excess of $1,000 during a calendar year or which makes expenditures aggregating in excess of $1,000 during a calendar year," with both *contribution* and *expenditure* defined as monies or anything of value "for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(4)(A), (8)(A), (9)(A). With respect to entities engaging in federal election activity, § 527 *political organizations* include the entities that are regulated as *political committees* under FECA. However, *political organization* is broader than *political committee*, in part because it also includes the groups colloquially referred to as 527s that have been controversial in recent years because they appear intended to influence federal elections in ways that may place them outside the definition of political committee. For more information on 527s, *see* CRS Report RS22895, *527 Groups and Campaign Activity: Analysis Under Campaign Finance and Tax Laws*, by (name redacted) and (name redacted).

expressly exclude § 501(c)(3) charitable organizations[40] and qualifying large § 501(c)(4) organizations from the definition of *covered organization*. S. 3295 does not contain similar exemptions. Many tax-exempt entities are incorporated and therefore would fall within the definition of *covered organization*, absent an exclusion. Therefore, under S. 3295, the term *covered organization* would include incorporated § 501(c)(3) organizations. It is important to note that the IRC imposes restrictions on the ability of tax-exempt organizations to engage in campaign activity; for example, § 501(c)(3) organizations are prohibited from engaging in such activity.[41] The activities that constitute electioneering under the IRC and FECA are not always the same.[42] For example, it appears possible that an issue advocacy communication, depending on its timing and content, might be an electioneering communication under FECA, but might not be treated as campaign activity under the IRC.[43]

Prohibitions on Making Contributions or Spending in Elections

In addition to its disclosure, disclaimer, and reporting requirements, the legislation contains several prohibitions. Specifically, it would prohibit certain government contractors, TARP recipients, and corporations subject to certain control or ownership by foreign nationals from making expenditures or contributions in connection with federal elections. **Table 1**, at the end of this report, contains additional detail on individual prohibitions.

Government Contracts

Section 101 of H.R. 5175 as passed by the House and S. 3628 would prohibit government contractors from making electioneering communications or independent expenditures "only if the value of the contract is equal to or greater than $10,000,000." This language appears to suggest that this prohibition is intended to apply only to contractors holding a single contract of at least $10 million.

S. 3295 would apply to contracts of at least $50,000. Although the original House bill had a similar limit, the House-passed bill increased the threshold to $10 million. Some have suggested that this modification was made to exempt small business government contractors from the prohibition. While the value of the "average" federal procurement contract may seem low ($120,634 in FY2008),[44] even small businesses routinely receive much larger contracts,[45]

[40] IRC § 501(c)(3) describes organizations organized and operated for charitable, educational, and religious purposes, among others.

[41] IRC § 501(c)(3) (prohibiting the organizations described therein from "participat[ing] in, or intervene[ing] in … any political campaign on behalf of (or in opposition to) any candidate for public office").

[42] For more information, see CRS Report R40141, *501(c)(3) Organizations and Campaign Activity: Analysis Under Tax and Campaign Finance Laws*, by (name redacted) and (name redacted).

[43] *See* Rev. Rul. 2004-6.

[44] This figure was obtained by dividing the total contract dollars awarded by the total number of contracts, as reported on USASpending.gov. *See* http://www.usaspending.gov/explore?carryfilters=on&trendreport=top_cont&fromfiscal=yes&tab=By+Recipient&fiscal_year=2009&tab=By+Recipient&fiscal_year=2008&fromfiscal=yes&carryfilters=on&Submit=Go.

[45] For purposes of federal procurement, a "small" business is one that is independently owned and operated, is "not dominant in its field of operation," and meets any definitions or standards established by the Small Business Administration. 15 U.S.C. § 632(a)(1)-(2)(A). These standards focus primarily upon the size of the business, as measured by the number of employees, its annual average gross income, and the size of other businesses within the same industry. 13 C.F.R. §§ 121.101-121.108. For example, businesses in the field of scheduled passenger air (continued...)

arguably providing one rationale for exempting contractors who have not received a contract valued at more than $10 million from the proposed ban on independent expenditures and electioneering communications.[46] Agencies may, for example, award contracts valued at up to $3.5 million ($5.5 million for manufacturing contracts) to small businesses participating in the 8(a) Minority Business Development Program without competing them,[47] and some small businesses have received contracts valued at over half a billion dollars.[48] "Large" government contractors, in contrast, can receive contracts valued at over $1 billion.[49]

TARP Recipients and Outer Continental Shelf Lessees

Section 101 of all three bills would prohibit prospective recipients of TARP funds from directly or indirectly making contributions, independent expenditures, or electioneering communications. Notably, it appears that the prohibitions would apply to TARP recipients using TARP funds, as well as their own funds. The applicable period of the prohibition would begin on the later of the commencement of the negotiations for financial assistance under title I of the Emergency Economic Stabilization Act of 2008[50] or the date of enactment of one of these bills, and end on the later of the ending of negotiations or the repayment of such financial assistance. In addition, H.R. 5175 contains a similar prospective prohibition for those holding or negotiating for Outer Continental Shelf oil and gas leases. S. 3295 and S. 3628 do not contain a similar prohibition.

Foreign Nationals

Several questions of interpretation could be raised by Section 102 of the legislation, which would apply existing prohibitions on contributions or expenditures by foreign nationals to foreign-controlled domestic corporations (e.g., U.S. subsidiaries of foreign corporations). For example, it is unclear how the FEC or a court would interpret or administer some of the key terms contained in the various thresholds for establishing foreign control, as proposed in Section 102. One such threshold focuses upon direct or indirect ownership by a foreign national of various amounts of the voting shares of a corporation (see **Table 1**), but would appear to leave the FEC substantial discretion in determining what constitutes "indirect ownership" or at what point in time ownership is determined. Other criteria similarly focus upon whether one or more foreign nationals "has the power to direct, dictate, or control the decision-making process of the corporation" with respect to its interests in the United States or in connection with its federal,

(...continued)

transportation are small if they have fewer than 1,500 employees, while those in the data processing field are small if they have a gross income of less than $25 million. 13 C.F.R. § 121.201.

[46] The relevant provisions of the DISCLOSE Act appear to apply to the value of each individual contract, not the total value of contracts received by a particular contractor. However, it is unclear whether the value is measured in terms of the base contract, or all options under the contract.

[47] 15 U.S.C. § 637 note; 48 C.F.R. § 19.805-1(b)(2). Certain group-owned 8(a) firms are not subject to even these limitations and may receive sole-source contracts of any value.

[48] Gov't Accountability Office, Contract Management: Increased Use of Alaska Native Corporations' Special 8(a) Provisions Calls for Tailored Oversight, GAO-06-399, April 2006, at 15, *available at* http://www.gao.gov/new.items/d06399.pdf (reporting a $593 million sole-source award to Chugach Management Services, Inc.).

[49] For example, Lockheed Martin Corp., the top federal contractor in FY2009, received five contracts valued at over $1 billion in FY2009. *See* USASpending.gov, http://www.usaspending.gov/explore?tab=By%20Recipient&contractorid=359799&fromfiscal=yes&carryfilters=on&fiscal_year=2009.

[50] 12 U.S.C. § 5211 *et seq*.

state, or local election activities, including PAC administration and making contributions and expenditures. However, this standard would also appear to leave the FEC substantial discretion to determine what forms of conduct or business arrangements would indicate that a foreign national has the power to "direct, dictate, or control" corporate decision-making.

Coordinated Party Expenditures

Section 104 of the legislation appears to lift the existing caps on coordinated party expenditures unless "the communication is controlled by, or made at the direction of, the candidate or an authorized committee of the candidate."[51] In the absence of increased contribution limits, candidates may face substantial obstacles responding to corporate and union advertising post-*Citizens United*. Lifting the caps on coordinated party expenditures arguably provides parties with a way to help their candidates facing potential corporate, union, or tax-exempt organization-funded advertising. On the other hand, some may object to increasing the amount of money in the political system, even if it is to respond to corporate or union advertising. In addition, the standard for communications "controlled by, or made at the direction of, the candidate or an authorized committee of the candidate" is not defined. Given this potential ambiguity, and an ongoing FEC rulemaking on coordination, some in Congress might wish to clarify terms.

Potential Effects of Disclosure and Disclaimer Provisions

The bills would require additional disclosure of donors to covered organizations. The provisions may be understood, at least in part, as a mechanism to limit the possibility that non-profit organizations might be used as "shadow groups"—groups to which corporations, other entities, or individuals would give funds to be used for campaign activities with little or no public disclosure. A notable aspect of the bills is that they would require the disclosure of certain donors who did not give money specifically for political activities, unlike, for example, the existing independent expenditure provision, which only requires the disclosure of donors who gave "for the purpose of furthering" the expenditure.[52]

Another potentially notable aspect of the donor disclosure provisions is that they would apply FEC reporting requirements to § 527 *political organizations* that are not *political committees* under FECA. These political organizations would include the "§ 527 groups" that have been controversial in recent years because they seem intended to influence federal elections in ways that might be outside the scope of FECA. Under current law, political committees report to the FEC, while the § 527 groups report to the IRS.[53] In both cases, the information is publicly available. The other types of covered organizations are not currently subject to similar reporting requirements.

[51] For additional discussion of coordinated party expenditures, see CRS Report RS22644, *Coordinated Party Expenditures in Federal Elections: An Overview*, by (name redacted) and (name redacted).

[52] 2 U.S.C. § 434(c)(2)(C); 11 C.F.R. § 109.10.

[53] In general, these groups are required to periodically report to the IRS any expenditure of at least $500 and donors who have given at least $200 during the year. IRC § 527(j). These requirements do not apply to independent expenditures. For more information, see CRS Report RS21716, *Political Organizations Under Section 527 of the Internal Revenue Code*, by (name redacted); CRS Report RS20918, *527 Organizations and Campaign Activity: Timing of Reporting Requirements under Tax and Campaign Finance Laws*, by (name redacted) and (name redacted).

The bills' disclosure and disclaimer requirements would not necessarily, in and of themselves, limit overall spending on political advertising. Ultimately, corporations, unions, and other groups intent on making independent expenditures and electioneering communications could choose to do so regardless of such requirements. The additional requirements proposed in the bills might, however, cause potential advertisers to consider whether they wish to be publicly accountable for the advertising.

Campaign-Related Activity Accounts

Section 213 of the bills would permit covered organizations to establish optional accounts for campaign-related activity, including independent expenditures and electioneering communications. Because such accounts do not currently exist, it is unclear how significant this provision might be. Several issues, however, could be relevant. First, it appears that once an organization elected to establish the account, it would be required to use that account exclusively for future *campaign-related activity*—a strategic or administrative decision that some organizations might not be willing to make on a permanent basis. Second, the provisions specify that amounts in the account be "exclusively for disbursements by the covered organization for campaign-related activity."[54] Given this language, it is unclear whether or not an organization using a campaign-related activity account could dispose of its funds if it decided to abandon political spending altogether. If Congress wishes to provide a non-campaign-related mechanism to do so, existing provisions in FECA permitting charitable contributions could be an option.[55]

Potential Implementation Concerns

Even if Congress enacts the DISCLOSE Act quickly, aspects of the legislation will require agency implementation. The process could affect how quickly and how clearly the act affects campaigns and related spending (e.g., independent political advertising). Because the DISCLOSE Act would primarily amend FECA, the FEC would be responsible for administering and enforcing most of the bill's provisions.[56]

It is possible that the FEC could implement the DISCLOSE Act quickly, although various factors suggest that it is unlikely the Commission could fully implement the act before the 2010 November general elections.[57] In addition to the time required to develop and reach agreement on rules, for those rules to be finalized (upon publication in the *Federal Register*), the Commission would have to also approve an *explanation and justification* (E&J) statement explaining its rationale and offering practical guidance about what the regulations mean and how they will be enforced. This process routinely takes months, even for expedited rulemakings. The Commission would have to also amend its reporting forms to adhere to the act's new requirements.

[54] DISCLOSE Act, § 213.

[55] 2 U.S.C. § 439a(a)(3). These provisions apply to permissible use of candidate campaign committee funds, suggesting that amendment would be required to make them applicable to campaign-related-activity accounts.

[56] 2 U.S.C. § 437c(b).

[57] Some primary elections have already occurred without FEC action or legislation implementing the Court's decision in *Citizens United*. Those who believe that the case marked a victory for protected speech might contend that an apparent lack of overwhelming new advertising could be evidence that additional regulation or legislation responding to the ruling is unnecessary or it could be that potential participants are remaining on the sidelines until the state of the law appears more settled.

Importantly, FECA requires that adopting rules and developing forms (among other provisions) requires affirmative votes from at least four of the six Commissioners.[58] A series of deadlocked votes (e.g., 3-3 ties) among members of the current Commission, however, suggests that disagreement among Commissioners is possible—particularly on controversial or ambiguous aspects of the legislation.[59] If disagreements resulted in deadlock or failure to implement the law as Congress intends, the DISCLOSE Act's effectiveness could be delayed or compromised.

Perhaps in response to those concerns, many of the DISCLOSE Act's provisions would become effective 30 days after enactment, with at least one becoming effective immediately upon enactment. The bills specify that their provisions would generally take effect regardless of whether the FEC had promulgated rules to implement the legislation. Nonetheless, the "regulated community" might lack practical and administrative guidance about how to comply with the act's provisions until the Commission could issue rules and begin considering advisory opinions. Nonetheless, even if rulemaking or amending forms were delayed, the law itself would still take effect as stated in the act. Therefore, even if some details remained to be determined, enacting the DISCLOSE Act or other legislation could permit Congress to place additional requirements on political advertisers or other campaign actors regardless of Commission action or inaction.

Conclusion

As Congress considers the DISCLOSE Act, it may be too soon to predict precisely how *Citizens United* might affect campaigns or political advertising in the absence of legislation. If Congress chooses to enact the DISCLOSE Act, it would provide additional information to the public and regulators about political advertising funded by corporations, unions, and tax-exempt organizations. It would also prohibit certain entities from funding electioneering communications and independent expenditures, as well as providing political parties with greater ability to make coordinated party expenditures in some cases.

Except for the spending prohibitions in the bill, nothing in the legislation would necessarily prevent corporations, unions, or other entities from funding political advertising calling for election or defeat of clearly identified candidates. The disclosure and disclaimer provisions could, however, provide the public and regulators with additional information about the sources of that advertising. Public disclosure could also cause would-be advertisers to think carefully before making political expenditures. For those who believe that *Citizens United* will usher in a new era of corporate or union dominance in elections, such an outcome might be welcome. On the other hand, those who believe that *Citizens United* correctly strengthens corporate and union speech rights might be wary of any provisions perceived as stifling the ability to participate in elections. As Congress considers the DISCLOSE Act, issues related to how terms are defined, the kinds of organizations that would be regulated, implementation, and other concerns may be relevant.

[58] For a brief overview of Commission duties requiring consensus among at least four Commissioners, see CRS Report RS22780, *The Federal Election Commission (FEC) With Fewer than Four Members: Overview of Policy Implications*, by (name redacted).

[59] For an overview of deadlocked votes during the current Commission's first year, between July 2008 and June 2009, see CRS Report R40779, *Deadlocked Votes Among Members of the Federal Election Commission (FEC): Overview and Potential Considerations for Congress*, by (name redacted). Deadlocks have continued on some matters since that time.

Table 1. Comparison of Major Provisions of H.R. 5175, S. 3628, and S. 3295 with Current Federal Law

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
Findings		No comparable provision.	Would set forth general and specific findings in support of the legislation. [§ 2]	With some modifications, similar to S. 3628 as introduced in the Senate, (hereinafter "S. 3628"). [§ 2]
Definition of *Independent Expenditure*	*Independent expenditure* is defined as an expenditure "expressly advocating the election or defeat of a clearly identified candidate" and that is not made in coordination with a candidate or party. [2 U.S.C. § 431(17)] According to Supreme Court precedent, the "functional equivalent of express advocacy" is a communication that is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate. [*Citizens United v. FEC,* 130 S. Ct. 876, 889-90 (2010), quoting *FEC v. Wisconsin Right to Life, Inc.,* 551 U.S. 449, 469-70 (2007)]	Would expand definition of *independent expenditure* to include an expenditure "that, when taken as a whole, expressly advocates the election or defeat of a clearly identified candidate, or is the functional equivalent of express advocacy because it can be interpreted by a reasonable person only as advocating the election or defeat of a candidate, taking into account whether the communication involved mentions a candidacy, a political party, or a challenger to a candidate, or takes a position on a candidate's character, qualifications, or fitness for office." Would impose 24-hour reporting requirement for expenditures of $10,000 or more made during the period up to and including the 20th day before an election and expenditures of $1,000 or more made during the period after the 20th day, but more than 24 hours before an election. [§ 201]	Substantially similar to H.R. 5175 as passed by the House (hereinafter "H.R. 5175"). [§ 201]	Substantially similar to H.R. 5175 and S. 3628. [§ 201]
Definition of *Electioneering*	*Electioneering communication* is	Would expand period prior to	Substantially similar to H.R. 5175.	Would expand period prior to

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
Communication	defined as a broadcast, cable, or satellite transmission that refers to a clearly identified federal office candidate and is made within 60 days of a general election (or within 30 days of a primary). [2 U.S.C. § 434(f)(3)(A)(i)(II)]	general election in which communications are treated as electioneering communications to 120 days. [§ 202]	[§ 202]	general election in which communications are treated as electioneering communications to 90 days. [§ 202]
Definition of *Public Communication* Exempting Free Internet Communications	*Public Communication* is defined as a communication by means of broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, or any other form of general public political advertising. [2 U.S.C. § 431(22)]	Would exempt Internet communications, unless placed for a fee on another person's website, from being treated as a form of "general public political advertising," thereby exempting such communications from the definition of *public communication*. [§ 105]	Substantially similar to H.R. 5175. [§ 105]	No relevant provision.
Involvement in Federal Elections by Foreign Nationals	Foreign nationals are prohibited from making contributions in federal, state, or local elections, and are prohibited from making independent expenditures and electioneering communications in federal elections, [2 U.S.C. § 441e], but U.S. subsidiaries of foreign corporations may form PACs to make expenditures and contributions under certain circumstances. FEC regulations provide that foreign nationals shall not "direct, dictate, control, or directly or indirectly participate" in the decision-making process of a corporation, labor union, political committee, or political organization with regard to	Would expand the definition of foreign national to prohibit contributions in federal, state, or local elections; and independent expenditures and electioneering communications in federal elections by foreign-controlled domestic corporations as follows: (1) if the foreign national is a foreign country, foreign government official, or a corporation principally owned or controlled by a foreign government or official, and the foreign national directly or indirectly owns or controls at least 5% of the corporation's voting shares; or (2) if the foreign national is other than a foreign country, foreign	Substantially similar to H.R. 5175. [§ 102]	Would expand the definition of *foreign national* to prohibit contributions in federal, state, or local elections; and independent expenditures and electioneering communications in federal elections by foreign-controlled domestic corporations as follows: (1) if a foreign national directly or indirectly owns at least 20% of the corporation's voting shares; or (2) if a majority of the corporation's board members are foreign nationals; or (3) if one or more foreign national can "direct, dictate, or control" the corporation's decision-making process with respect to its U.S. interests; or

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
	federal or non-federal election-related activities, such as decisions concerning the making of contributions, donations, expenditures, or disbursements in connection with federal, state or local election or regarding the administration of a political committee. [11 C.F.R. § 110.20(i)]	government official, or a corporation principally owned or controlled by a foreign government or official, and the foreign national directly or indirectly owns or controls at least 20% of the corporation's voting shares; or (3) if at least two foreign nationals, each of whom owns or controls at least 5% of the corporation's voting shares, directly or indirectly own or control at least 50% of the corporation's voting shares; or (4) if a majority of the corporation's board members are foreign nationals; (5) if one or more foreign nationals can "direct, dictate, or control" the corporations' decision-making process with respect to its U.S. interests; or (6) if one or more foreign nationals can "direct, dictate, or control" decision-making of the corporation with respect to its activities in connection with federal, state, or local elections, including making contributions, donations, expenditures, independent expenditures, disbursements for electioneering communications or administration of a PAC established or maintained by the corporation. [§ 102]		(4) if one or more foreign nationals can "direct, dictate, or control" decision-making of the corporation with respect to its activities in connection with federal, state, or local elections, including making contributions, donations, expenditures, independent expenditures, disbursements for electioneering communications or administration of a PAC established or maintained by the corporation. [§ 102]

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
		Would require CEOs (or highest-ranking corporate official) to certify under penalty of perjury, to the FEC, before making expenditures in connection with federal office elections, that the foreign-national prohibitions above do not apply to the corporation. [§ 102] Would clarify that provision does not prohibit a corporation which is not a foreign national from establishing a political action committee (PAC), or from making a lawful contribution in a state or local election, so long as none of the funds in the PAC or as used for the state-contribution are provided by a foreign national and no foreign national has power to "direct, dictate, or control" the PAC or state-level contribution. [§ 102]	Substantially similar to H.R. 5175. [§ 102]	
Involvement in Federal Elections by Government Contractors	Government contractors are prohibited from making contributions. [2 U.S.C. § 441c]	Would prohibit government contractors holding contracts of $10 million or more from making independent expenditures and electioneering communications. [§ 101]	Substantially similar to H.R. 5175. [§ 101]	Would prohibit government contractors holding contracts of $50,000 or more from making independent expenditures and electioneering communications. [§ 101]
Contributions, Independent Expenditures, and Electioneering Communications by Those Receiving TARP Funds	Corporations are prohibited from using general treasury funds to make contributions. [2 U.S.C. § 441b(a)] As a result of *Citizens United*, it	Would prohibit entities receiving or negotiating for TARP funds from making contributions, independent expenditures, or electioneering communications until the funds were repaid (or if	Substantially similar to H.R. 5175 and S. 3295. [§ 101]	Substantially similar to H.R. 5175 and S. 3628. [§ 101]

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
	appears that regardless of whether having received TARP funds, corporations are permitted to use general treasury funds to make independent expenditures and electioneering communications. [*Citizens United v. FEC,* 130 S. Ct. 876 (2010)]	the negotiations ended without the entity receiving funds). Prohibition would begin on the later of the commencement of the negotiations for such financial assistance under title I of the Emergency Economic Stabilization Act of 2008 or the date of enactment H.R. 5175, and end on the later of the ending of negotiations or the repayment of such financial assistance. [§ 101]		
Contributions, Independent Expenditures, and Electioneering Communications by Those Holding and Negotiating Outer Continental Shelf Oil and Gas Leases	No existing prohibition specifically on those holding oil and gas leases. Corporations are prohibited from using general treasury funds to make contributions. [2 U.S.C. § 441b(a)] As a result of *Citizens United*, corporations are permitted to use general treasury funds to make independent expenditures and electioneering communications. [*Citizens United v. FEC,* 130 S. Ct. 876 (2010)]	Would prohibit those holding or negotiating for Outer Continental Shelf oil and gas leases from making contributions, independent expenditures, and electioneering communications. Prohibition would begin on the later of the commencement of the lease negotiations or the date of enactment of H.R. 5175, and end on the later of the ending of negotiations or termination of the lease. [§ 101]	No relevant provision.	No relevant provision.
Definition of *Covered Organization* for Purposes of the Act's Disclosure and Disclaimer Provisions	Not relevant under current law. IRC § 501(c) describes entities that qualify for tax-exempt status, including § 501(c)(3) charitable organizations; § 501(c)(4) social welfare organizations; § 501(c)(5) labor unions, and § 501(c)(6) trade associations. Many	Would define *covered organizations* as corporations, labor unions, § 501(c)(4), (c)(5), and (c)(6) organizations, and § 527 political organizations that are not political committees under FECA. Would expressly exclude § 501(c)(3) organizations from the	Substantially similar to H.R. 5175. [§ 211(a), (b), (c); § 212; § 213; § 214; § 301; exception for qualifying § 501(c)(4) organizations is in § 211(c)]	Substantially similar to H.R. 5175 and S. 3628, but no exclusion for § 501(c)(3) organizations and qualifying § 501(c)(4) organizations. [§ 212]

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
	organizations are incorporated. § 501(c)(4), (c)(5), and (c)(6) organizations may engage in a limited amount of campaign activity under the IRC, although there may be tax consequences.[a] § 501(c)(3) organizations are absolutely prohibited from engaging in such activity. What is campaign activity under the IRC and FECA might not always be the same. IRC § 527 provides tax-exempt status to *political organizations* with the primary purpose of influencing elections or engaging in similar activities. Under FECA, *political committees* are entities receiving contributions or making expenditures aggregating at least $1,000 per year for the purpose of influencing federal elections. The term *political organization* is broader than *political committee,* in part because it includes groups intending to influence state and local elections and the groups colloquially referred to as 527s that have been controversial in recent years because they appear intended to influence federal elections in ways that may place them outside the definition of *political committee*. [IRC §§ 501(c), 527; 2 U.S.C. § 431(4)(A), (8)(A), (9)(A)]	definition. Also excluded would be § 501(c)(4) organizations that do not use funds from corporations or labor unions for *campaign-related activity* if the organization had § 501(c)(4) status for at least 10 years; had at least 500,000 dues-paying members who were individuals and at least one member in each state, D.C., and Puerto Rico during the prior year; and received no more than 15% of total donations from corporations or labor unions during the prior year. [§ 211(a), (b), (c); § 212; § 213; § 214; § 301; exception for qualifying § 501(c)(4) organizations is in § 211(c)]		
Stand by Your Ad Disclaimers in Political	Corporations and labor unions funding *express advocacy* messages	Would expand types of communications funded by	Substantially similar to H.R. 5175.	Substantially similar to H.R. 5175 and S. 3628.

Major Policy Issue	Overview of Major Relevant Provisions in Current Federal Law	Overview of Major Provisions in H.R. 5175 as Passed by the House	Overview of Major Provisions in S. 3628 as Introduced in the Senate	Overview of Major Provisions in S. 3295 as Introduced in the Senate
Advertising	are required to indentify in the communication: their name, address, and contact information; and that the communication "is not authorized by any candidate or candidate's committee." [2 U.S.C. § 441d(a)(3)]	"covered organizations" that trigger disclaimer requirements to include disbursements for an "independent expenditure consisting of a public communication." [§ 214]	[§ 214]	[§ 214]
	Corporate and union radio and TV ads are required to include an audio statement that the corporation or union paid for the ad. In TV ads, the statement is required to be conveyed by a view or voice-over of a corporate or union representative. [2 U.S.C. § 441d(d)(2)]	Would expand disclaimer requirements for disbursements by covered organizations for independent expenditures or electioneering communications to require the organization's CEO or highest ranking official or any "significant funder" to state their approval for the communication, and would require listing the "Top Five Funders." [§ 214]	Substantially similar to H.R. 5175. [§ 214]	Substantially similar to H.R. 5175 and S. 3628. [§ 214]
	Candidates are currently required to state their approval for their broadcast advertising. [2 U.S.C. § 441d(d)(1)]	Would require disclaimers to include name of person approving message and name of any "significant funder" (if the communication is an independent expenditure consisting of a public communication and is paid in whole or in part with disbursement by covered organization for campaign-related activity), and the local jurisdiction and state where individual resides or organization's principal office is located. [§ 214]	Substantially similar to H.R. 5175, except it would not require the disclaimers to include the local jurisdiction and state where the individual resides or the organization's principal office location, but would require that the title of the individual approving the message be provided. [§ 214]	Substantially similar to H.R. 5175 and S. 3628, except that it would not require the disclaimers to include the local jurisdiction and state where the individual resides or the organization's principal office is located, nor would it require that the title of the individual approving the message be provided. [§ 214]
		Would provide exemption to	Substantially similar.	Substantially similar.

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		disclaimer requirements if on the basis of criteria established in FEC regulations, the communication is so short that including disclaimer would constitute a hardship. [§ 214] Would expand application of disclaimer requirements to cover political committees that accept contributions or donations that do not comply with FECA contribution limits or source prohibitions. [§ 214]	[§ 214] No relevant provision.	[§ 214] No relevant provision
Disclaimers for Automated Political Telephone Calls (*Robo Calls*)	Election law and telecommunications law do not address political robo calls per se. *Robo calls* that advocate for election or defeat of candidates or solicit funds appear to require disclaimers stating who paid for the communication. [2 U.S.C. § 441d(a)] Among other requirements, telecommunications law appears to require that prerecorded phone calls identify the entity responsible for the call at the beginning of the message [47 U.S.C. § 227(d)(3); 47 C.F.R. § 64.1200(b)(2)].	Would require political robo calls to include a disclaimer. Would also require disclosure of top five funders for an electioneering communication or independent expenditure consisting of a public communication made or paid for by covered organizations or political committees that accept contributions or donations that do not comply with FECA contribution limits or source prohibitions. Both disclosure and disclaimer would have to be made at the beginning of the call, unless the FEC determined that the message was so short that doing so would be a hardship. [§ 214]	Substantially similar to H.R. 5175 [§ 214]	No relevant provision.
Disclosure of Expenditures Disclosure of donors to	In quarterly reports to the FEC, entities making independent expenditures in excess of $250 during a calendar year must	Would require *covered organizations* making *public independent expenditures* that aggregate at least $10,000 in a	Substantially similar to H.R. 5175. [§ 211(a),(b)]	Substantially similar to H.R. 5175 and S. 3628; except that the reporting thresholds for donors of independent expenditures

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covered organizations making independent expenditures and electioneering communications	disclose donors who contribute more than $200 "for the purpose of furthering" the expenditure. If the entity spends at least $10,000 toward independent expenditures during an election year, those expenditures must be reported to the FEC within 48 hours if the expenditure occurred up to 20 days before the general election. Entities that spend at least $1,000 on independent expenditures less than 20 days before the election must report that spending to the FEC within 24 hours. Donors of more than $200 must also be included in the 48-hour and 24-hour reports. [2 U.S.C. § 434(c)(2)(C); 11 C.F.R. § 109.10] Entities making at least $10,000 in electioneering communications must disclose donors who contribute at least $1,000; however, if the disbursement is made from a separate account that contains only contributions by U.S. citizens and legal resident aliens made directly to the account for electioneering communications, then only those donors who contribute at least $1,000 to the account are disclosed. [2 U.S.C. § 434(f)(2)(E), (F)] 11 C.F.R. § 104.20 contains rules for corporations, labor unions, and qualified nonprofit	calendar year to disclose, within 48 hours: (1) donors who gave at least $600 for *campaign-related activity* or in response to solicitation for funds for such activity (along with the candidate, election, or public independent expenditure, if specified by donor); and (2) donors who gave unrestricted donations during the reporting period of at least: - $6,000 if the disbursements were made exclusively from a Campaign-Related Activity Account (CRAA) and the organization made deposits of at least $10,000 into account during reporting period, or - $600 if any disbursement was not from the CRAA. If organization is *deemed* to have made a transfer (see below), thresholds would be increased to $10,000. Rules essentially the same for covered organizations making at least $10,000 in *electioneering communications*, although the $600 and $6,000 amounts are increased to $1,000 and $10,000. To get benefit of higher threshold, organization must make from the CRAA those *electioneering communications* that it reasonably believes are for a § 527 exempt function.[a]		would be $1,000 and $10,000; no higher donor-disclosure threshold for organizations deemed to have made a transfer; and all *electioneering communications* would have to be made from CRAA in order to qualify for higher donor-disclosure threshold. [§ 211(a), (b)].

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	corporations that make certain types of electioneering communications. Its applicability in light of *Citizens United* is unclear. Section 527 political organizations that are not political committees under FECA are generally required to periodically report information regarding their donors and expenditures to the IRS (or a state). Such information is made publically available. The reporting requirement does not apply to expenditures that are independent expenditures. [26 U.S.C. § 527(j), (k)]	Donor-disclosure rules would not apply to payments received in the regular course of business. [§ 211(a), (b)]		
		If organization uses CRAA, all disbursements for campaign-related activity would have to come from CRAA except for those which the organization reasonably believes would not be treated as for a § 527 exempt function,[a] and account funds would have to be used "exclusively" for such purposes. CRAA would contain: donations made for *campaign-related activity* or in response to solicitations for funds for such activity; and amounts transferred from other accounts (including general treasury funds). Could not contain funds which the organization and donor "mutually agreed" would not be used for such activity. The establishment or	Substantially similar to H.R. 5175. [§ 213]	Substantially similar to H.R. 5175 and S. 3628, except no exclusion for disbursements not treated as made for a § 527 exempt function; [a] no express language addressing treatment of accounts for purposes of IRC § 527(f)(3);[a] and CRAA could not contain funds that donor notified organization in writing could not be used for such activity. [§ 213]

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		administration of the CRAA would not, by itself, be treated as the establishment or administration of a political committee. Nonetheless, it "may" be treated as a separate segregated fund for purposes of IRC § 527(f)(3).[a] [§ 213]		
		If the donation would be disclosed and the organization and donor "mutually agree" at the time of the donation that the funds are not to be used for *campaign-related activity*, then the organization's CFO would have to certify to the donor, within 30 days of receipt, that the funds would not be used for such activity and the person's identity would not be disclosed through the bill's disclosure or disclaimer provisions. [§ 212]	Substantially similar to H.R. 5175. [§ 212]	If donor notified organization in writing that the funds were not to be used for *campaign-related activity,* then the organization's CFO would have to certify to the donor within seven days of receipt that the funds would not be used for such activity and the person's identity would not be disclosed through the bill's disclosure or disclaimer provisions. [§ 212]
		An organization only subject to reporting requirements because it was *deemed* to have made a transfer (see below) would not have to file report if all donors were individuals and any donor making a donation for campaign-related activity or unrestricted donation during the reporting period gave less than $10,000. [§ 211(a),(b)]	Substantially similar to H.R. 5175. [§ 211(a),(b)]	No comparable provision.
Disclosure of Expenditures	No comparable existing statutory provision.	A *covered organization* would be treated as making a public independent expenditure or	Substantially similar to H.R. 5175.	Substantially similar to H.R. 5175 and S. 3628.

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Transfers subsequently used for campaign activity		electioneering communication if it transferred funds to another person for such purpose or was *deemed* to have made a transfer. The organization would be *deemed* to have made such a transfer if: • it designates, requests, or suggests that the amounts be used for public independent expenditures or electioneering communications and the transferee agrees to do so; • the person making the expenditure (or someone acting on his/her behalf) expressly solicited the organization for funds for making or paying for such expenditures; • it and the transferee engaged in written or oral discussions regarding the transferee making or paying for such expenditures (or donating or transferring the amounts to another person for such purpose); • it knew or had reason to know that the transferee intended to make such expenditures; or • it or the transferee made at least $50,000 in public independent expenditures or electioneering	Substantially similar to H.R. 5175.	The organization would be *deemed* to have made such a transfer if: • the person making the expenditure (or someone acting on his/her behalf) solicited funds from the transferor or transferee for making such expenditures; • there were "substantial discussions" about such expenditures between the transferor and transferee; • the transferor or transferee knew (or should have known) of the covered organization's intent to make such expenditures; or • the transferor or transferee made a public independent expenditure or electioneering communication in the current or previous election cycle.

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		communications during the two-year period ending on the date of the transfer. An exception would exist for commercial transactions occurring in the ordinary course of business between the organization and transferee (unless there was affirmative evidence that the amounts were transferred for the purpose of making such expenditures), or the covered organization and transferee mutually agreed that the funds would not be used for campaign-related activity. Exception would also exist for transfers between affiliated organizations (including § 501(c)(3) organizations) if the aggregate amount transferred during the year was less than $50,000 and neither organization was established for the purpose of disbursing funds for campaign-related activity. For determining whether the $50,000 threshold was met, funds attributable to dues, fees, or assessments paid by individuals on a regular, periodic basis in accordance with a per-individual calculation that was made on a regular basis would be attributed to the individual and not the organization. An organization would be an affiliate of another if its governing instrument required it to be bound the other's decisions; it is	Substantially similar to H.R. 5175. Exception would also exist for transfers between affiliated organizations. If the transfer[s] aggregated at least $50,000 during the year, then the report filed by the transferee organization must include the information required relating to donations and payments made to the affiliate which transferred the funds and to any affiliate which transferred at least $50,000 in the 12-month period prior to the transfer. Affiliates would be a membership organization and its related state and local entities; a national or international labor organization and its local union, or an organization of national or international unions and its state and local central bodies; and a corporation and its wholly owned	An exception would exist for commercial transactions occurring in the ordinary course of business. Additionally, funds may not be used for campaign-related activity if the donor notifies the organization in writing that the funds may not be used for such purpose. No comparable provision. [§ 211(a),(b); § 212]

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		charted by the other organization; or its governing board includes designated representatives of the other organization or includes persons who have a certain relationship to the other organization or whose service on the board is contingent upon the other organization's approval. [§ 211(a),(b)]	subsidiaries. [§ 211(a),(b)]	
CEO Certification of Certain Information to the FEC	No comparable existing statutory provision.	If a covered organization makes a disbursement for "campaign-related activity" during the calendar quarter, the CEO or designee would be required to certify to FEC, within 15 days of the quarter's end, that the disbursement was made in compliance with applicable law. [§ 212] (See also CEO certification requirements in the *Involvement in Federal Elections by Foreign Nationals* row above. [§ 102])	Substantially similar to H.R. 5175 and S. 3295. [§ 212]	Substantially similar to H.R. 5175 and S. 3628. [§ 212]
Indexing for Inflation	FECA currently contains some indexing provisions (e.g., 2 U.S.C. § 441a(c)) but they are generally inapplicable to the relevant new provisions in the DISCLOSE Act.	Would index various reporting thresholds (e.g., for donor disclosure) established in the bill. [§ 215]	Substantially similar to H.R. 5175 [§ 215]	No comparable provision.
Disclosure of Certain Lobbyist Spending	Lobbyists must semiannually report "contributions" exceeding $200 made to candidates, leadership PACs, or parties. [2 U.S.C. § 1604(d)(1)(D)] (Note: Additional FEC electioneering communication and	Would require lobbyists to disclose in certain Lobbying Disclosure Act (LDA) reports: (1) independent expenditures of at least $1,000 funded by those lobbyists; the names of candidates supported or opposed in the ads; and the amount spent supporting	Substantially similar to H.R. 5175; however in addition to disclosure of electioneering communications of at least $1,000 funded by lobbyists, and the names of candidates referred to in the ads, would also require disclosure of whether the ad supported or	Substantially similar to H.R. 5175 and S. 3628. [§ 221]

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	independent expenditure reporting requirements may apply to lobbyists in certain circumstances, but are not intended to apply specifically to lobbyists.)	or opposing each candidate; (2) electioneering communications of at least $1,000 funded by lobbyists; the names of candidates referred to in the ads. [§ 221]	opposed the candidate. [§ 221]	
Disclosure to Shareholders, Members, and Donors of *Covered Organizations*	There is no comparable requirement, although disclosure may be required to the FEC (e.g., for independent expenditures or electioneering communications) or, in the case of tax-exempt organizations, to the IRS, and such information is generally subject to public disclosure. [2 U.S.C. § 434; 26 U.S.C. §§ 527, 6033, 6103]	Would require a *covered organization* to disclose disbursements for campaign-related activity in any "regular, periodic reports" on its finances/activities provided to its shareholders, members, and donors. Information would include the date and amount spent, the source of the funds, the name of candidates referred to in the ads and whether the ads supported or opposed the candidate, and information about transferred funds. The information would have to be reported in a "clear and conspicuous manner." A covered organization would also be required to post a hyperlink on its homepage to the location at the FEC website containing the organizations' reports. The hyperlink would have to be posted within 24 hours after the FEC posts the information and remain on the organization's website for one year following the election. [§ 301]	Substantially similar to H.R. 5175. [§ 301]	Substantially similar information must be reported as under H.R. 5175 and S. 3628, although no requirement it be reported in a "clear and conspicuous manner." Within 24 hours of filing reports with FEC, organization would have to post information regarding independent expenditures and electioneering communications on its website, through a direct link from its homepage, in a machine-readable, searchable, sortable, and downloadable manner. Information would have to remain on website for one year following the election. Organization would also have to post a breakdown of disbursements by political party and incumbents/challengers by January 31 in the year following the election and keep the information on the website until the end of that year. [§ 301]

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Coordination of Certain Expenditures	A communication is coordinated (and therefore an in-kind contribution to a candidate or party, or a coordinated party expenditure) with a candidate or a party when the communication satisfies at least one "content" standard and at least one "conduct" standard. A content standard is met, in part, for House or Senate elections, if the communication refers to a candidate and is disseminated within 90 days before the general or primary election, and for presidential and vice presidential elections, if the communication refers to a candidate and is disseminated within 120 days before the primary or nominating convention or caucus. [11 C.F.R. § 109.21(a),(c)] A conduct standard is met, in part, if the communication is created, produced, or distributed at the request or suggestion of a candidate or party, or at the suggestion of the person paying for the communication and the candidate or party assents to the suggestion, or the communication is created, produced, or distributed after one or more "substantial discussions" about the communication between the person paying for it and the candidate or party. A discussion is "substantial" if information about the candidate's or party's	Would define coordination as a "covered communication," (which "refers" to a candidate and is publically distributed) that is made "in cooperation, consultation, or concert with, or at the request or suggestion of" a candidate or party or any communication that "republishes, disseminates, or distributes" any candidate campaign material. Would exempt from definition of "coordinated communication" communications appearing in a news story, commentary, or editorial distributed through broadcast, newspaper, or magazine, (unless controlled by party, political committee, or candidate) or a candidate debate or forum. [§ 103]	Substantially similar to H.R. 5175. [§ 103]	Substantially similar to H.R. 5175 and S. 3628, although exemption for a news story, commentary, or editorial distributed through broadcast, newspaper, or magazine, (unless controlled by party, political committee, or candidate) or a candidate debate or forum would only apply to "covered communications." [§ 103]

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	campaign plan, projects, activities, or needs is conveyed to a person paying for the communication and that information is material to the creation, production, or distribution of the communication. [11 C.F.R. § 109.21(d)]			
		Would expand time period that a communication is considered coordinated between a corporation or union and a House or Senate candidate who is referenced in corporate/union communication, to those made 90 days before the primary *through* the general election. [§ 103]	Substantially similar to H.R. 5175. [§ 103]	Substantially similar to H.R. 5175 and S. 3628. [§ 103]
		Would expand time period that coordination is prohibited between corporation or union and presidential or vice presidential candidates, referenced in corporate/union ads made 120 days before the first presidential primary *through* the general election. [§ 103]	Substantially similar to H.R. 5175. [§ 103]	Substantially similar to H.R. 5175 and S. 3628. [§ 103]
		Would specify that a covered communication may not be considered coordinated "solely on the grounds" that a person "engaged in discussions with the candidate or committee" regarding that person's position on a legislative or policy matter (including urging the candidate or	Substantially similar to H.R. 5175. [§ 103]	No comparable provision.

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		party to adopt that person's position), so long as there is no discussion between the person and the candidate or committee regarding the candidate's campaign plans, projects, activities, or needs. [§ 103]		
	Safe Harbor for Endorsements/Solicitations: Provides that a public communication in which a federal office candidate endorses another federal or non-federal candidate is not considered coordinated with respect to the endorsement of the federal candidate unless the public communication promotes, supports, attacks, or opposes the endorsing candidate or another candidate seeking election to the same office. Further provides that a public communication in which a federal office candidate solicits funds for another federal or non-federal candidate, political committee, or tax-exempt organization is not considered coordinated with respect to the soliciting federal office candidate unless the public communication promotes, supports, attacks, or opposes the soliciting candidate or another candidate seeking election to the same office. Safe Harbor for Firewalls: Provides that "conduct standard," under which coordination is found, is not met if commercial	Would expressly preserve FEC regulations, 11 C.F.R. § 109.21(g) or (h), providing safe harbor for endorsements and solicitations by federal candidates and for establishment and use of a firewall. [§ 103]	Substantially similar to H.R. 5175. [§ 103]	No comparable provision.

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	vendor, former employee, or political committee has established a firewall that meets certain requirements. Safe harbor provision does not apply if specific information indicates that despite firewall, information regarding candidate or party campaign plans, projects, activities, or needs, which are material to the creation, production, or distribution of the communication, was used or conveyed to the person paying for the communication. Further provides that firewall must prohibit flow of information between employees or consultants providing services for the person paying for the communication and those employees or consultants providing services to the candidate, who is clearly identified in the communication, or the candidate's opponent, or a party; and that the firewall must be described in a written policy that is distributed to all relevant employees, consultants, and clients. [11 C.F.R. § 109.21 (g), (h)]			
Coordinated Party Expenditure Limits	Provides limits on expenditures by parties in connection with federal office candidates. [2 U.S.C. § 441a(d)]	Would provide that direct costs incurred by a political party for a communication made in connection with a federal office campaign is not subject to the coordinated party expenditure limits unless the communication is	Substantially similar to H.R. 5175. [§ 104]	Substantially similar to H.R. 5175 and S. 3628. [§ 104]

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		"controlled by, or made at the direction of" the candidate or the candidate's authorized committee. [§ 104]		
Electronic Filing of Senate Campaign Finance Reports	Senate political committees file campaign finance reports on paper with the Secretary of the Senate. [2 U.S.C. § 432(g)]	No relevant provision.	Would require Senate political committees to electronically file campaign finance reports directly with the FEC. [§ 231]	Substantially similar to S. 3628. [§ 231]
Equal Opportunities Requirement and Reasonable Access Rule	If a broadcaster grants broadcasting time to a candidate for any public office, the broadcaster is required to afford equal opportunities to all other candidates for that same office, with certain exceptions. [47 U.S.C. § 315(a)]	Does not amend current law.	Does not amend current law.	Would expand the equal opportunities requirement to include political parties (in addition to candidates). [§ 401]
	Broadcasters are required to provide federal office candidates with reasonable access to broadcast stations or permit them to purchase reasonable amounts of broadcast time. [47 U.S.C. 312(a)(7)]	Does not amend current law.	Does not amend current law.	Would expand the reasonable access rule to include reasonable amounts of time purchased at the lowest unit charge (LUC, see below) and makes rule applicable to parties (in addition to candidates). [§ 401]
Lowest Unit Charge (*LUC*, also *Lowest Unit Rate*) Provisions	During the 45 days preceding a primary election or 60 days preceding a general election, candidate committees may purchase preemptible broadcast-advertising time at the lowest unit charge (LUC) applicable to a commercial advertiser for comparable time. [47 U.S.C. § 315(b)]	Does not amend current law.	Does not amend current law.	Would prohibit preemption of candidate or party use of broadcast station unless beyond broadcaster's control. Would cap LUC at the maximum amount charged for the same amount of time sold, at any time, during the past 180 days; would limit LUC to the state(s) in which the candidate is seeking election.

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				Would extend LUC to purchases by national party committees if a covered organization spends at least $50,000 for electioneering communications or independent expenditures surrounding a federal election. Would require random audits of LUC functioning and require broadcasters to make LUC requests publicly available via the Internet. [§ 401]
Judicial Review	The Bipartisan Campaign Reform Act of 2002 (BCRA) provides that if the constitutionality of the Act is challenged, the action shall be filed in U.S. District Court for D.C., heard by a 3-judge court, reviewable only by direct appeal to the U.S. Supreme Court, requires courts to advance on the docket and expedite the disposition of the action and appeal; provides that any Member of the House or Senate shall have the right to intervene or bring suit challenging the constitutionality. [Bipartisan Campaign Reform Act (BCRA), P.L. 107-155, § 403]	Would provide that if constitutionality of the Act is challenged, the action shall be filed in U.S. District Court for D.C. and appealed to the Court of Appeals for the D.C. Circuit; any Member of House or Senate, who satisfies requirements for standing under Art. III of the U.S. Constitution, shall have right to intervene in any action challenging the Act's constitutionality; any Member of House or Senate may bring suit challenging the constitutionality. [§ 401]	Substantially similar to H.R. 5175.	Substantially similar to H.R. 5175 and S. 3628, however would also require courts to advance on the docket and expedite the disposition of the action; and would provide that any Member of the House or Senate shall have the right to intervene. [§ 501]
No Effect on Protections Against Threats, Harassments, and Reprisals	According to Supreme Court precedent, disclosure requirements cannot constitutionally be required where there is a reasonable probability that compelled disclosure would subject	Would provide that nothing in the Act shall be construed to affect any law, rule, or regulation that waives a requirement to disclose information relating to any person where there is a reasonable probability that the disclosure	Substantially similar to H.R. 5175.	No comparable provision.

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	contributors to threats, harassment, or reprisals from either government officials or private parties, [Buckley v. Valeo, 424 U.S. 1, 74 (1976); see also, Brown v. Socialist Workers '74 Campaign Comm., 459 U.S. 87, 93-94 (1982)].	would subject person to threats, harassments, or reprisals. [§ 402]		
Severability	The Bipartisan Campaign Reform Act of 2002 (BCRA) provides that if any provision of the Act or application of a provision is held unconstitutional, the remainder the Act shall not be affected by the holding. [Bipartisan Campaign Reform Act of 2002 (BCRA), P.L. 107-155, § 401]	Would specify that if any provision of the Act or application of a provision is held unconstitutional, the remainder shall not be affected by the holding. [§ 403]	Substantially similar to H.R. 5175.	Substantially similar to H.R. 5175 and S. 3628. [§ 502]

Source: CRS analysis of H.R. 5175, S. 3295, S. 3628, and current federal campaign finance law, or applicable regulations as noted.

Note: H.R. 5175, S. 3295, and S. 3628 would change the definitions of *independent expenditures* and *electioneering communications*. Thus, the terms do not have the same meanings in all the columns. The column describing major provisions in current law uses the terms *independent expenditures* and *electioneering communications* as defined under existing law, while the column describing major provisions in H.R. 5175, S. 3295 and S. 3628 uses the expanded definitions of the terms as set forth in the legislation.

a. Under IRC § 527, an exempt function is the "influence[ing] or attempt[ing] to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office, to an office in a political organization, or as a Presidential or Vice-Presidential elector." Under current law, any § 501(c) organization that makes an expenditure for an exempt function activity is subject to a 35% tax on the lesser of its net investment income or the expenditure. An organization may avoid the tax by setting up a separate segregated fund under IRC § 527(f)(3) to make the expenditures.

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