

## **Administration's Direct Assault on Freedom of Speech**

*“Obama's Gangster Politics”* – *Wall Street Journal*, 5/05/11<sup>1</sup>

Democrats in Washington have again taken aim at First Amendment rights for their own political gain. In the last Congress, Democrats made multiple attempts to pass the DISCLOSE Act, the political brain child of the former chairmen of the Democratic Congressional Campaign Committee and Democratic Senate Campaign Committee.<sup>2</sup> This bill would have imposed speech prohibitions and disclosure requirements so onerous that even the liberal American Civil Liberties Union opposed it, concluding that the bill would, “significantly [harm] the speech and associational rights of Americans.”<sup>3</sup> Republicans defeated this flawed legislation, and it has not been reintroduced this year.<sup>4</sup>

### **When Legislating Fails, Govern by Executive Order**

The Obama Administration, aware it does not have enough votes for this power grab, is now considering imposing new restrictions on political speech by executive order, a draft of which was recently revealed.<sup>5</sup> The executive order would require:

- Businesses competing for federal contracts to disclose political contributions they have made in the last two years.
- Disclosure of contributions to candidates, which already must be disclosed to the FEC, and confidential expenditures to third party groups engaging in election-related speech.
- Disclosures not just by businesses, but also by their officers and directors, who would have to disclose their *personal* speech-related expenditures.<sup>6</sup>

Conveniently for Democrats, the executive order would not cover labor unions.

### **An Attempt to Silence Critics**

A number of Republican Senators led by Sen. Collins recently sent a letter to the President objecting both to the substance of the order – it would reverse the long trend of reform that sought to remove politics from contracting decisions – and to its “attempt to circumvent Congress.”<sup>7</sup>

This executive order can only be construed as an attempt to intimidate businesses and individuals from engaging in disfavored political speech – speech the Supreme Court has made clear is beyond the government's power to prohibit.<sup>8</sup> If the executive order goes into effect, anyone wishing to do business with the federal government likely will think twice before they contribute to groups or causes that are critical of sitting Administrations.

## Politicizing the Procurement Process

Meanwhile, those pursuing a government contract may feel pressure to donate to the President's reelection campaign, his party, or groups fighting on his behalf.

The Chamber of Commerce recently said: *"The obvious danger of this is that it will lead prospective businessmen and businesswomen to a choice no American should ever be forced to make: 'Do I support the party in power in the hopes I can continue my livelihood, or do I support the candidate I believe will do the best job?'"*<sup>9</sup>

Unsurprisingly, the Administration's Big Labor allies would not face any additional disclosure requirements and would continue their aggressive role in political campaigns less encumbered by competing voices.

It is no surprise that an Administration might be tempted to take steps to silence criticism or to encourage support. Nor is it surprising that a President gearing up for what is anticipated to be the most expensive campaign in history might want to tilt the fundraising playing field to his advantage.<sup>10</sup> But those temptations must be rejected. The President should scrap this draft order immediately, ensure the integrity of the federal contracting process, and preserve Americans' freedom of speech.

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<sup>1</sup> "Obama's 'Gangster Politics,'" Kimberley A. Strassel, Wall Street Journal, May 5, 2011, <http://online.wsj.com/article/SB10001424052748703992704576305414137806694.html>

<sup>2</sup> The DISCLOSE Act's chief House sponsor was Congressman Van Hollen and chief Senate sponsor was Senator Schumer.

<sup>3</sup> ACLU Letter to the United States Senate Opposing the DISCLOSE Act, July 23, 2010, [http://www.aclu.org/files/assets/Ltr\\_to\\_Senate\\_re\\_ACLU\\_opposes\\_DISCLOSE\\_Act.pdf](http://www.aclu.org/files/assets/Ltr_to_Senate_re_ACLU_opposes_DISCLOSE_Act.pdf)

<sup>4</sup> Vote #240, 111th Congress, September 23, 2010, [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=111&session=2&vote=00240#position](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=111&session=2&vote=00240#position)

<sup>5</sup> "Obama Weighs Disclosure Order for Contractors," Perry Bacon and T.W. Farnam, Washington Post, April 20, 2011, [http://www.washingtonpost.com/politics/obama-weighs-disclosure-order-for-contractors/2011/04/20/AFBw7qEE\\_story.html](http://www.washingtonpost.com/politics/obama-weighs-disclosure-order-for-contractors/2011/04/20/AFBw7qEE_story.html);

"Obama Administration Considers Moves to Limit Anonymous Donations," Kenneth P. Vogel, Politico, April 19, 2011, <http://www.politico.com/news/stories/0411/53445.html>

<sup>6</sup> Draft Executive Order: Disclosure of Political Spending by Government Contractors, available at [http://www.politico.com/static/PPM187\\_disclosure.html](http://www.politico.com/static/PPM187_disclosure.html)

<sup>7</sup> Republican Senators' Letter to President Obama, April 26, 2011, available at [http://collins.senate.gov/public/continue.cfm?FuseAction=PressRoom.PressReleases&ContentRecord\\_id=a2c9b8ec-a177-35c7-3680-01bc7134d425&CFID=92591733&CFTOKEN=23521658](http://collins.senate.gov/public/continue.cfm?FuseAction=PressRoom.PressReleases&ContentRecord_id=a2c9b8ec-a177-35c7-3680-01bc7134d425&CFID=92591733&CFTOKEN=23521658)

<sup>8</sup> *Citizens United v. F.E.C.*, 558 U.S. 50 (2010), <http://www.law.cornell.edu/supct/html/08-205.ZS.html>

<sup>9</sup> "A Choice No American Should be Forced to Make," Chamber Post blog, U.S. Chamber of Commerce, April 21, 2011, <http://www.chamberpost.com/2011/04/a-choice-no-american-should-be-forced-to-make/>

<sup>10</sup> "Obama's Re-Election Bid Could be the Most Expensive Ever," Simon Nguyen, April 18, 2011, Yahoo News, [http://news.yahoo.com/s/ac/20110418/pl\\_ac/8319177\\_obamas\\_reelection\\_bid\\_could\\_be\\_the\\_most\\_expensive\\_ever](http://news.yahoo.com/s/ac/20110418/pl_ac/8319177_obamas_reelection_bid_could_be_the_most_expensive_ever)