

112TH CONGRESS
2D SESSION

S. _____

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. WHITEHOUSE introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Federal Election Campaign Act of 1971 to provide for additional disclosure requirements for corporations, labor organizations, Super PACs and other entities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Democracy Is
5 Strengthened by Casting Light On Spending in Elections
6 Act of 2012” or the “DISCLOSE Act of 2012”.

7 **SEC. 2. CAMPAIGN DISBURSEMENT REPORTING.**

8 (a) INFORMATION REQUIRED TO BE REPORTED.—

1 (1) TREATMENT OF FUNCTIONAL EQUIVALENT
2 OF EXPRESS ADVOCACY AS INDEPENDENT EXPENDI-
3 TURE.—Subparagraph (A) of section 301(17) of the
4 Federal Election Campaign Act of 1971 (2 U.S.C.
5 431(17)) is amended to read as follows:

6 “(A) that expressly advocates the election
7 or defeat of a clearly identified candidate, or is
8 the functional equivalent of express advocacy
9 because, when taken as a whole, it can be inter-
10 preted by a reasonable person only as advo-
11 cating the election or defeat of a candidate, tak-
12 ing into account whether the communication in-
13 volved mentions a candidacy, a political party,
14 or a challenger to a candidate, or takes a posi-
15 tion on a candidate’s character, qualifications,
16 or fitness for office; and”.

17 (2) EXPANSION OF PERIOD DURING WHICH
18 COMMUNICATIONS ARE TREATED AS ELECTION-
19 EERING COMMUNICATIONS.—Section 304(f)(3)(A)(i)
20 of such Act (2 U.S.C. 434(f)(3)(A)(i)) is amended—

21 (A) by redesignating subclause (III) as
22 subclause (IV); and

23 (B) by striking subclause (II) and insert-
24 ing the following:

1 “(II) in the case of a communica-
2 tion which refers to a candidate for an
3 office other than the President or Vice
4 President, is made during the period
5 beginning on January 1 of the cal-
6 endar year in which a general or run-
7 off election is held and ending on the
8 date of the general or runoff election
9 (or in the case of a special election,
10 during the period beginning on the
11 date on which the announcement with
12 respect to such election is made and
13 ending on the date of the special elec-
14 tion);

15 “(III) in the case of a commu-
16 nication which refers to a candidate
17 for the office of President or Vice
18 President, is made in any State dur-
19 ing the period beginning 120 days be-
20 fore the first primary election, caucus,
21 or preference election held for the se-
22 lection of delegates to a national
23 nominating convention of a political
24 party is held in any State (or, if no
25 such election or caucus is held in any

1 State, the first convention or caucus
2 of a political party which has the au-
3 thority to nominate a candidate for
4 the office of President or Vice Presi-
5 dent) and ending on the date of the
6 general election; and”.

7 (3) EFFECTIVE DATE; TRANSITION FOR ELEC-
8 TIONEERING COMMUNICATIONS MADE PRIOR TO EN-
9 ACTMENT.—The amendment made by paragraph (2)
10 shall apply with respect to communications made on
11 or after January 1, 2013, except that no commu-
12 nication which is made prior to such date shall be
13 treated as an electioneering communication under
14 subclause (II) or (III) of section 304(f)(3)(A)(i) of
15 the Federal Election Campaign Act of 1971 (as
16 amended by paragraph (2)) unless the communica-
17 tion would be treated as an electioneering commu-
18 nication under such section if the amendment made
19 by paragraph (2) did not apply.

20 (b) DISCLOSURE REQUIREMENTS FOR CORPORA-
21 TIONS, LABOR ORGANIZATIONS, AND CERTAIN OTHER
22 ENTITIES.—

23 (1) IN GENERAL.—Section 324 of the Federal
24 Election Campaign Act of 1971 (2 U.S.C. 441k) is
25 amended to read as follows:

1 **“SEC. 324. DISCLOSURE OF CAMPAIGN-RELATED DISBURSE-**
2 **MENTS BY COVERED ORGANIZATIONS.**

3 “(a) DISCLOSURE STATEMENT.—

4 “(1) IN GENERAL.—Any covered organization
5 that makes campaign-related disbursements aggregating more than \$10,000 in an election reporting
6 cycle shall, not later than 24 hours after each disclosure date, file a statement with the Commission
7 made under penalty of perjury that contains the information described in paragraph (2)—

8 “(A) in the case of the first statement filed
9 under this subsection, for the period beginning
10 on the first day of the election reporting cycle
11 and ending on the first such disclosure date;
12 and

13 “(B) in the case of any subsequent statement filed under this subsection, for the period
14 beginning on the previous disclosure date and
15 ending on such disclosure date.

16 “(2) INFORMATION DESCRIBED.—The information described in this paragraph is as follows:

17 “(A) The name of the covered organization
18 and the principal place of business of such organization.
19

20 “(B) The amount of each campaign-related
21 disbursement made by such organization during
22
23
24
25
26

1 the period covered by the statement of more
2 than \$1,000, and the name and address of the
3 person to whom the disbursement was made.

4 “(C) In the case of a campaign-related dis-
5 bursement that is not a covered transfer, the
6 election to which the campaign-related disburse-
7 ment pertains and if the disbursement is made
8 for a public communication, the name of any
9 candidate identified in such communication and
10 whether such communication is in support of or
11 in opposition to a candidate.

12 “(D) A certification by the chief executive
13 officer or person who is the head of the covered
14 organization that the campaign-related dis-
15 bursement is not made in cooperation, consulta-
16 tion, or concert with or at the request or sug-
17 gession of a candidate, authorized committee, or
18 agent of a candidate, political party, or agent of
19 a political party.

20 “(E) If the covered organization makes
21 campaign-related disbursements using exclu-
22 sively funds in a segregated bank account con-
23 sisting of funds that were paid directly to such
24 account by persons other than the covered orga-

1 nization that controls the account, for each
2 such payment to the account—

3 “(i) the name and address of each
4 person who made such payment during the
5 period covered by the statement;

6 “(ii) the date and amount of such
7 payment; and

8 “(iii) the aggregate amount of all such
9 payments made by the person during the
10 period beginning on the first day of the
11 election reporting cycle and ending on the
12 disclosure date;

13 but only if such payment was made by a person
14 who made payments to the account in an aggre-
15 gate amount of \$10,000 or more during the pe-
16 riod beginning on the first day of the election
17 reporting cycle and ending on the disclosure
18 date.

19 “(F) If the covered organization makes
20 campaign-related disbursements using funds
21 other than funds in a segregated bank account
22 described in subparagraph (E), for each pay-
23 ment to the covered organization—

1 “(i) the name and address of each
2 person who made such payment during the
3 period covered by the statement;

4 “(ii) the date and amount of such
5 payment; and

6 “(iii) the aggregate amount of all such
7 payments made by the person during the
8 period beginning on the first day of the
9 election reporting cycle and ending on the
10 disclosure date;

11 but only if such payment was made by a person
12 who made payments to the covered organization
13 in an aggregate amount of \$10,000 or more
14 during the period beginning on the first day of
15 the election reporting cycle and ending on the
16 disclosure date.

17 “(G) Such other information as required in
18 rules established by the Commission to promote
19 the purposes of this section.

20 “(3) EXCEPTIONS.—

21 “(A) AMOUNTS RECEIVED IN ORDINARY
22 COURSE OF BUSINESS.—The requirement to in-
23 clude in a statement filed under paragraph (1)
24 the information described in paragraph (2)
25 shall not apply to amounts received by the cov-

1 ered organization in commercial transactions in
2 the ordinary course of any trade or business
3 conducted by the covered organization or in the
4 form of investments (other than investments by
5 the principal shareholder in a limited liability
6 corporation) in the covered organization.

7 “(B) DONOR RESTRICTION ON USE OF
8 FUNDS.—The requirement to include in a state-
9 ment submitted under paragraph (1) the infor-
10 mation described in subparagraph (F) of para-
11 graph (2) shall not apply if—

12 “(i) the person described in such sub-
13 paragraph prohibited, in writing, the use of
14 the payment made by such person for cam-
15 paign-related disbursements; and

16 “(ii) the covered organization agreed
17 to follow the prohibition and deposited the
18 payment in an account which is segregated
19 from any account used to make campaign-
20 related disbursements.

21 “(C) AMOUNTS RECEIVED FROM AFFILI-
22 ATES.—The requirement to include in a state-
23 ment submitted under paragraph (1) the infor-
24 mation described in subparagraph (F) of para-

1 graph (2) shall not apply to any amount which
2 is described in subsection (f)(3)(A)(i).

3 “(4) OTHER DEFINITIONS.—For purposes of
4 this section:

5 “(A) DISCLOSURE DATE.—The term ‘dis-
6 closure date’ means—

7 “(i) the first date during any election
8 reporting cycle by which a person has
9 made campaign-related disbursements ag-
10 gregating more than \$10,000; and

11 “(ii) any other date during such elec-
12 tion reporting cycle by which a person has
13 made campaign-related disbursements ag-
14 gregating more than \$10,000 since the
15 most recent disclosure date for such elec-
16 tion reporting cycle.

17 “(B) ELECTION REPORTING CYCLE.—The
18 term ‘election reporting cycle’ means the 2-year
19 period beginning on the date of the most recent
20 general election for Federal office.

21 “(C) PAYMENT.—The term ‘payment’ in-
22 cludes any contribution, donation, transfer, pay-
23 ment of dues, or other payment.

24 “(b) COORDINATION WITH OTHER PROVISIONS.—

1 “(1) OTHER REPORTS FILED WITH THE COM-
2 MISSION.—Information included in a statement filed
3 under this section may be excluded from statements
4 and reports filed under section 304.

5 “(2) TREATMENT AS SEPARATE SEGREGATED
6 FUND.—A segregated bank account referred to in
7 subsection (a)(2)(E) may be treated as a separate
8 segregated fund for purposes of section 527(f)(3) of
9 the Internal Revenue Code of 1986.

10 “(c) FILING.—Statements required to be filed under
11 subsection (a) shall be subject to the requirements of sec-
12 tion 304(d) to the same extent and in the same manner
13 as if such reports had been required under subsection (c)
14 or (g) of section 304.

15 “(d) CAMPAIGN-RELATED DISBURSEMENT DE-
16 FINED.—In this section, the term ‘campaign-related dis-
17 bursement’ means a disbursement by a covered organiza-
18 tion for any of the following:

19 “(1) An independent expenditure consisting of a
20 public communication.

21 “(2) An electioneering communication, as de-
22 fined in section 304(f)(3).

23 “(3) A covered transfer.

1 “(e) COVERED ORGANIZATION DEFINED.—In this
2 section, the term ‘covered organization’ means any of the
3 following:

4 “(1) A corporation (other than an organization
5 described in section 501(c)(3) of the Internal Rev-
6 enue Code of 1986).

7 “(2) An organization described in section
8 501(c) of such Code and exempt from taxation
9 under section 501(a) of such Code (other than an
10 organization described in section 501(c)(3) of such
11 Code).

12 “(3) A labor organization (as defined in section
13 316(b)).

14 “(4) Any political organization under section
15 527 of the Internal Revenue Code of 1986, other
16 than a political committee under this Act.

17 “(f) COVERED TRANSFER DEFINED.—

18 “(1) IN GENERAL.—In this section, the term
19 ‘covered transfer’ means any transfer or payment of
20 funds by a covered organization to another person if
21 the covered organization—

22 “(A) designates, requests, or suggests that
23 the amounts be used for—

24 “(i) campaign-related disbursements
25 (other than covered transfers); or

1 “(ii) making a transfer to another
2 person for the purpose of making or pay-
3 ing for such campaign-related disburse-
4 ments;

5 “(B) made such transfer or payment in re-
6 sponse to a solicitation or other request for a
7 donation or payment for—

8 “(i) the making of or paying for cam-
9 paign-related disbursements (other than
10 covered transfers); or

11 “(ii) making a transfer to another
12 person for the purpose of making or pay-
13 ing for such campaign-related disburse-
14 ments;

15 “(C) engaged in discussions with the re-
16 cipient of the transfer or payment regarding—

17 “(i) the making of or paying for cam-
18 paign-related disbursements (other than
19 covered transfers); or

20 “(ii) donating or transferring any
21 amount of such transfer or payment to an-
22 other person for the purpose of making or
23 paying for such campaign-related disburse-
24 ments;

1 “(D) made campaign-related disburse-
2 ments (other than a covered transfer) in an ag-
3 gregate amount of \$50,000 or more during the
4 2-year period ending on the date of the transfer
5 or payment, or knew or had reason to know
6 that the person receiving the transfer or pay-
7 ment made such disbursements in such an ag-
8 gregate amount during that 2-year period; or

9 “(E) knew or had reason to know that the
10 person receiving the transfer or payment would
11 make campaign-related disbursements in an ag-
12 gregate amount of \$50,000 or more during the
13 2-year period beginning on the date of the
14 transfer or payment.

15 “(2) EXCLUSIONS.—The term ‘covered transfer’
16 does not include any of the following:

17 “(A) A disbursement made by a covered
18 organization in a commercial transaction in the
19 ordinary course of any trade or business con-
20 ducted by the covered organization or in the
21 form of investments made by the covered orga-
22 nization.

23 “(B) A disbursement made by a covered
24 organization if—

1 “(i) the covered organization prohib-
2 ited, in writing, the use of such disburse-
3 ment for campaign-related disbursements;
4 and

5 “(ii) the recipient of the disbursement
6 agreed to follow the prohibition and depos-
7 ited the disbursement in an account which
8 is segregated from any account used to
9 make campaign-related disbursements.

10 “(3) EXCEPTION FOR CERTAIN TRANSFERS
11 AMONG AFFILIATES.—

12 “(A) EXCEPTION FOR CERTAIN TRANS-
13 FERS AMONG AFFILIATES.—

14 “(i) IN GENERAL.—The term ‘covered
15 transfer’ does not include an amount
16 transferred by one covered organization to
17 another covered organization if such trans-
18 fer—

19 “(I) is not made directly into a
20 separate segregated bank account de-
21 scribed in subsection (a)(2)(E), and

22 “(II) is treated as a transfer be-
23 tween affiliates under subparagraph
24 (B).

1 “(ii) SPECIAL RULE.—If the aggre-
2 gate amount of transfers described in
3 clause (i) exceeds \$50,000 in any election
4 reporting cycle—

5 “(I) the covered organization
6 which makes such transfers shall pro-
7 vide to the covered organization re-
8 ceiving such transfers the information
9 required under subsection (a)(2)(F)
10 (applied by substituting ‘the period
11 beginning on the first day of the elec-
12 tion reporting cycle and ending on the
13 date of the most recent transfer de-
14 scribed in subsection (f)(3)(A)(i)’ for
15 ‘the period covered by the statement’
16 in clause (i) thereof); and

17 “(II) the covered organization re-
18 ceiving such transfers shall report the
19 information described in subclause (I)
20 on any statement filed under sub-
21 section (a)(1) as if any contribution,
22 donation, or transfer to which such
23 information relates was made directly
24 to the covered organization receiving
25 the transfer.

1 national unions and its State and local en-
2 tities.

3 “(iii) A corporation and its wholly
4 owned subsidiaries.

5 “(D) COVERAGE OF TRANSFERS TO AF-
6 FILIATED SECTION 501(c)(3) ORGANIZA-
7 TIONS.—This paragraph shall apply with re-
8 spect to an amount transferred by a covered or-
9 ganization to an organization described in para-
10 graph (3) of section 501(c) of the Internal Rev-
11 enue Code of 1986 and exempt from tax under
12 section 501(a) of such Code in the same man-
13 ner as this paragraph applies to an amount
14 transferred by a covered organization to an-
15 other covered organization.”.

16 (2) CONFORMING AMENDMENT.—Section
17 304(f)(6) of such Act (2 U.S.C. 434) is amended by
18 striking “Any requirement” and inserting “Except
19 as provided in section 324(b), any requirement”.

20 **SEC. 3. APPLICATION OF DISCLOSURE RULES TO SUPER**
21 **PACS.**

22 (a) IN GENERAL.—Subsection (e) of section 324 of
23 the Federal Election Campaign Act of 1971 (2 U.S.C.
24 441k), as amended by section 2, is amended by adding
25 at the end the following new paragraph:

1 “(5) A political committee with an account that
2 accepts donations or contributions that do not com-
3 ply with the contribution limits or source prohibi-
4 tions under this Act, but only with respect to such
5 accounts.”.

6 (b) CONFORMING AMENDMENT.—Paragraph (4) of
7 section 324(e) of such Act (2 U.S.C. 441k), as amended
8 by section 2, is amended by inserting “(except as provided
9 in paragraph (5))” before the period at the end.

10 **SEC. 4. SEVERABILITY.**

11 If any provision of this Act or amendment made by
12 this Act, or the application of a provision or amendment
13 to any person or circumstance, is held to be unconstitu-
14 tional, the remainder of this Act and amendments made
15 by this Act, and the application of the provisions and
16 amendment to any person or circumstance, shall not be
17 affected by the holding.

18 **SEC. 5. EFFECTIVE DATE.**

19 Except as provided in section 2(a)(3), the amend-
20 ments made by this Act shall apply with respects to dis-
21 bursements made on or after January 1, 2013, and shall
22 take effect without regard to whether or not the Federal
23 Election Commission has promulgated regulations to carry
24 out such amendments.