

114TH CONGRESS  
2D SESSION

# H. R. 6338

To amend the Federal Election Campaign Act of 1971 to require corporations to disclose to their shareholders the amounts disbursed for certain political activity, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 17, 2016

Mr. CARTWRIGHT (for himself, Mr. DEFAZIO, Mr. SCHIFF, Ms. KAPTUR, and Mr. GENE GREEN of Texas) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Federal Election Campaign Act of 1971 to require corporations to disclose to their shareholders the amounts disbursed for certain political activity, 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 “Openness in Political  
5 Expenditures Now Act” or the “OPEN Act”.

1 **SEC. 2. DISCLOSURE BY CORPORATIONS TO SHARE-**  
2 **HOLDERS OF DISBURSEMENTS FOR POLIT-**  
3 **ICAL ACTIVITY.**

4 (a) DISCLOSURE REQUIRED.—Title III of the Fed-  
5 eral Election Campaign Act of 1971 (52 U.S.C. 30101  
6 et seq.) is amended by adding at the end the following  
7 new section:

8 **“SEC. 325. DISCLOSURES BY CORPORATIONS TO SHARE-**  
9 **HOLDERS OF INFORMATION ON DISBURSE-**  
10 **MENTS FOR CERTAIN POLITICAL ACTIVITY.**

11 “(a) INCLUDING INFORMATION IN REGULAR PERI-  
12 ODIC REPORTS.—

13 “(1) IN GENERAL.—A corporation which sub-  
14 mits regular, periodic reports to its shareholders  
15 shall include in each such report, in a clear and con-  
16 spicuous manner, the information described in para-  
17 graph (2) with respect to the disbursements made by  
18 the corporation for covered political activity during  
19 the period covered by the report, but only if the  
20 amount of the disbursement made for such activity  
21 during the period covered by the report equals or ex-  
22 ceeds the applicable threshold for the activity de-  
23 scribed in paragraph (3).

24 “(2) INFORMATION DESCRIBED.—The informa-  
25 tion described in this paragraph is, for each dis-  
26 bursement for covered political activity—

1           “(A) the date of the disbursement;

2           “(B) the amount of the disbursement;

3           “(C) in the case of a disbursement con-  
4           sisting of an independent expenditure or an  
5           electioneering communication, or in the case of  
6           a covered political activity described in sub-  
7           section (c)(3), the name of the candidate identi-  
8           fied in the independent expenditure or election-  
9           eering communication involved, the Commission  
10          ID assigned to the candidate, and the office  
11          sought by the candidate; and

12          “(D) in the case of a covered political ac-  
13          tivity described in subsection (c)(4), the identi-  
14          fication of the association or organization to  
15          whom the disbursement was made, and the  
16          Commission ID (if any) assigned to the associa-  
17          tion or organization.

18          “(3) APPLICABLE THRESHOLD FOR DISCLO-  
19          SURE.—For purposes of paragraph (1), the ‘applica-  
20          ble threshold’ with respect to a disbursement for  
21          covered political activity during a period covered by  
22          a report is as follows:

23                 “(A) In the case of covered political activ-  
24                 ity consisting of an independent expenditure,  
25                 \$250.

1           “(B) In the case of covered political activ-  
2           ity consisting of an electioneering communica-  
3           tion or a communication described in subsection  
4           (c)(3), \$10,000.

5           “(C) In the case of covered political activ-  
6           ity consisting of a payment described in sub-  
7           section (c)(4), the amount of the limitation on  
8           contributions which is in effect under section  
9           315(a)(1)(C) as of the last day of the period.

10          “(b) SUBMISSION OF STATEMENT TO COMMISSION.—

11           “(1) SUBMISSION OF STATEMENT.—If a cor-  
12           poration includes information in a report pursuant  
13           to this section, at the time the corporation submits  
14           the report to its shareholders, the corporation shall  
15           file a statement with the Commission consisting of  
16           the information included in the report pursuant to  
17           this section.

18           “(2) HYPERLINK TO INFORMATION.—

19           “(A)       REQUIRING       POSTING       OF  
20           HYPERLINK.—If a corporation maintains an  
21           Internet site, the corporation shall post on such  
22           Internet site a hyperlink from its homepage to  
23           the location on the Internet site of the Commis-  
24           sion which contains the statement filed by the  
25           corporation under paragraph (1).

1           “(B) DEADLINE; DURATION OF POST-  
2           ING.—The corporation shall post the hyperlink  
3           described in subparagraph (A) not later than  
4           24 hours after the Commission posts the state-  
5           ment filed by the corporation under paragraph  
6           (1) on the Internet site of the Commission, and  
7           shall ensure that the hyperlink remains on the  
8           Internet site of the corporation until the expira-  
9           tion of the 1-year period which begins on the  
10          date of the election with respect to which the  
11          disbursements included in the statement are  
12          made.

13          “(c) COVERED POLITICAL ACTIVITY DEFINED.—In  
14          this section, the term ‘covered political activity’ means  
15          each of the following:

16               “(1) An independent expenditure (as defined in  
17               section 301(17)).

18               “(2) An electioneering communication (as de-  
19               fined in section 304(f)(3)).

20               “(3) A communication which would be treated  
21               as an electioneering communication under section  
22               304(f)(3) if the communication had been a broad-  
23               cast, cable, or satellite communication.



1           “(C)(i) Subparagraph (A) shall not apply  
2 to an entity for a taxable year if the total ex-  
3 penditures of such entity for the taxable year  
4 for covered political activity exceed the lesser  
5 of—

6                   “(I) 10 percent of the total expendi-  
7 tures of such entity for the taxable year, or

8                   “(II) \$10,000,000.

9           “(ii) Subparagraph (A) shall not apply to  
10 an entity for a taxable year unless its governing  
11 instrument includes provisions the effects of  
12 which are to prohibit the expenditures of the  
13 entity for a covered political activity from ex-  
14 ceeding the threshold specified in clause (i).

15           “(iii) For purposes of this subparagraph,  
16 the term ‘covered political activity’ means—

17                   “(I) any activity described in para-  
18 graphs (1) through (3) of section 325(e) of  
19 the Federal Election Campaign Act of  
20 1971; and

21                   “(II) any payment by the entity to  
22 any other entity described in this para-  
23 graph or to an organization described in  
24 paragraph (6) which the payor entity  
25 knows, or has reason to know, will be used

1 directly or indirectly by the payee entity or  
2 organization for any activity referred to in  
3 subclause (I).

4 “(iv) Clause (i) shall not apply for a tax-  
5 able year for which the 10 percent threshold  
6 specified in clause (i)(I) is exceeded by not  
7 more than a de minimis amount if the Sec-  
8 retary determines that the reason for exceeding  
9 the threshold was not willful and is due to rea-  
10 sonable cause.

11 “(v) The Secretary shall prescribe such  
12 regulations as may be necessary or appropriate  
13 to prevent the avoidance of clause (i), including  
14 regulations relating to a direct or indirect  
15 transfer of all or part of the assets of an entity  
16 to an entity controlled (directly or indirectly) by  
17 the same person or persons who control the  
18 transferor entity.”.

19 (b) EFFECTIVE DATE.—The amendment made by  
20 subsection (a) shall apply to taxable years beginning after  
21 the date of the enactment of this Act.

22 **SEC. 4. SEVERABILITY.**

23 If any provision of this Act or amendment made by  
24 this Act, or the application of a provision or amendment  
25 to any person or circumstance, is held to be unconstitu-



1 tional, the remainder of this Act and amendments made  
2 by this Act, and the application of the provisions and  
3 amendment to any person or circumstance, shall not be  
4 affected by the holding.

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