To amend the Securities Exchange Act of 1934 to require the express authorization of a majority of shareholders of a public company for certain political expenditures by that company, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2010

Mr. CAPUANO (for himself, Mr. LARSON of Connecticut, Ms. PINGREE of Maine, and Mr. GRAYSON) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Securities Exchange Act of 1934 to require the express authorization of a majority of shareholders of a public company for certain political expenditures by that company, 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 “Shareholder Protection
5 Act of 2010”.

6 SEC. 2. FINDINGS.

7 Congress finds the following:
(1) Corporations make significant political contributions and expenditures that directly or indirectly influence the election of candidates and support or oppose political causes. Decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders.

(2) Corporations, acting through their boards and executives, are obligated to conduct business for the best interests of their owners, the shareholders. Corporate boards and executives that use corporation funds to support and oppose political candidates, parties, and causes in opposition to the interests of their shareholders are not acting for the best interests of the corporation.

(3) Historically, shareholders have not had a way to know, or to influence, the political activities of corporations they own. Shareholders and the public have a right to know how corporations are spending their funds to make political contributions or expenditures benefitting candidates, political parties, and political causes.

(4) Corporations should be accountable to their shareholders prior to making political contributions or expenditures affecting local, State or Federal gov-
ernance and public policy. Requiring the express ap-
proval of a corporation’s shareholders prior to mak-
ing political contributions or expenditures will estab-
lish necessary accountability.

SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLIT-
ICAL ACTIVITY.

The Securities Exchange Act of 1934 is amended by
adding after section 14 the following new section:

“SEC. 14A. SHAREHOLDER APPROVAL OF CERTAIN POLIT-
ICAL EXPENDITURES.

“(a) AFFIRMATIVE AUTHORIZATION.—No issuer may
make any expenditure for political activities in excess of
$10,000 in any fiscal year without first obtaining the writ-
ten affirmative authorization for such expenditure by a
majority of all shareholders.

“(b) NATURE OF DECISIONS.—A decision to make a
contribution or expenditure for political activities in excess
of $10,000 shall not be considered a routine matter of the
corporation under rules and guidelines established by any
national securities exchange or by the Commission.

“(c) FIDUCIARY DUTY; LIABILITY.—A violation of
subsection (a) shall be considered a breach of a fiduciary
duty of the officers and directors who authorized such an
expenditure. The officers and directors who authorize such
an expenditure without first obtaining such authorization
of shareholders shall be jointly and severally liable in any action brought in any court of competent jurisdiction to any shareholder or class of shareholders for the amount of such expenditure.

“(d) EXEMPTION FOR CERTAIN MEDIA.—The provisions of this section shall not apply to an issuer whose sole business is the publication or broadcasting of news, commentary, literature, music, entertainment, artistic expression, scientific, historical or academic works, or other forms of information. The Commission shall issue such guidance as it determines necessary or appropriate regarding the extent of the exemption provided by this subsection.

“(e) DEFINITIONS.—As used in this section the following definitions apply:

“(1) AFFIRMATIVE AUTHORIZATION.—The term ‘affirmative authorization’ means the full, free, and written consent of a shareholder, obtained without intimidation or fear of reprisal, and shall not include votes made by a broker or any other representative.

“(2) ISSUE ADVOCACY CAMPAIGN.—The term ‘issue advocacy campaign’ means any expenditure for any communication to the general public intended to encourage the public to contact a State or Federal Government official regarding pending legis-
lation, public policy or government rule or regulation, but does not include contributions or expenditures for registered lobbyists employed by the corporation to lobby State or Federal Government officials directly.

“(3) MAJORITY OF ALL SHAREHOLDERS.—The term ‘majority of all shareholders’ means number of shareholders that combined own more than 50 percent of all outstanding shares. Shareholders not casting votes shall not count toward such a majority.

“(4) EXPENDITURE FOR POLITICAL ACTIVITIES.—

“(A) The term ‘expenditure for political activities’ means—

“(i) expenditures in support of, or opposition to, any Federal, State, or local candidate;

“(ii) contributions to or expenditures in support of any political party, committee, electioneering communication, voter registration campaign, ballot measure campaign, or an issue advocacy campaign; and

“(iii) dues or other payments to trade associations or other tax exempt organizations that are, or could reasonably be an-
ticipated to be, used for the purposes de-
scribed in subparagraphs (A) and (B).

“(B) Such term shall not include—

“(i) direct lobbying efforts through
registered lobbyists employed or hired by
the corporation;

“(ii) communications by a corporation
to its stockholders and executive or admin-
istrative personnel and their families;

“(iii) nonpartisan registration and
get-out-the-vote campaigns by a corpora-
tion aimed at its stockholders and execu-
tive or administrative personnel and their
families; or

“(iv) the establishment, administra-
tion and solicitation of contributions to a
separate segregated fund to be utilized for
political purposes by a corporation.”.

SEC. 4. REPORTING REQUIREMENTS.

Section 13 of the Securities Exchange Act of 1934
(15 U.S.C. 78m) is amended by adding at the end the
following:

“(m) REPORTING REQUIREMENTS RELATING TO
CERTAIN POLITICAL EXPENDITURES.—
“(1) IN GENERAL.—Not later than 180 days after the date of enactment of this subsection, the Commission shall modify its reporting rules under this section to require issuers to disclose quarterly any expenditure for political activities (as such term is defined in section 14A(e)(4)) made during the preceding quarter. Such a report shall be filed with the Commission and provided to shareholders and shall include—

“(A) the date of the contributions or expenditures;

“(B) the amount of the contributions or expenditures;

“(C) the name or identity of the candidate, political party, committee, electioneering communication, voter registration campaign, ballot measure campaign or issue advocacy campaign;

“(D) if the expenditures were made for or against a candidate, including an electioneering communication, the office sought by the candidate and the political party affiliation of the candidate;

“(E) if the contributions or expenditures were made for or against a ballot measure, the purpose of the measure and whether the con-
tributions or expenditures were made in support
or opposition to the ballot measure; and

“(F) if the contributions or expenditures
were made for or against an issue advocacy
campaign, the nature of the political issue and
whether the contributions were made in support
or opposition to the political issue.

“(2) Public Availability.—The Commission
shall ensure that, to the greatest extent practicable,
the quarterly reports required by this subsection are
publicly available through the Commission website in
a manner that is searchable, sortable and
downloadable, consistent with the requirements of
section 24.”.

SEC. 5. REPORT.

On an annual basis, the Office of Management and
Budget shall conduct an audit on the compliance or non-
compliance with the requirements of this Act by public
corporations, their management and shareholders, as well
as the effectiveness of the Securities and Exchange Com-
mission in meeting the reporting and disclosure require-
ments of this Act. Not later than April 1 of each year,
the Office of Management and Budget shall submit to the
President a report on the audit activities required under this Act.