

111<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4537

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.

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## 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

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## 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           (1) Corporations make significant political con-  
2 tributions and expenditures that directly or indi-  
3 rectly influence the election of candidates and sup-  
4 port or oppose political causes. Decisions to use cor-  
5 porate funds for political contributions and expendi-  
6 tures are usually made by corporate boards and ex-  
7 ecutives, rather than shareholders.

8           (2) Corporations, acting through their boards  
9 and executives, are obligated to conduct business for  
10 the best interests of their owners, the shareholders.  
11 Corporate boards and executives that use corpora-  
12 tion funds to support and oppose political can-  
13 didates, parties, and causes in opposition to the in-  
14 terests of their shareholders are not acting for the  
15 best interests of the corporation.

16           (3) Historically, shareholders have not had a  
17 way to know, or to influence, the political activities  
18 of corporations they own. Shareholders and the pub-  
19 lic have a right to know how corporations are spend-  
20 ing their funds to make political contributions or ex-  
21 penditures benefitting candidates, political parties,  
22 and political causes.

23           (4) Corporations should be accountable to their  
24 shareholders prior to making political contributions  
25 or expenditures affecting local, State or Federal gov-

1 ernance and public policy. Requiring the express ap-  
2 proval of a corporation’s shareholders prior to mak-  
3 ing political contributions or expenditures will estab-  
4 lish necessary accountability.

5 **SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLIT-**  
6 **ICAL ACTIVITY.**

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

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

11 “(a) **AFFIRMATIVE AUTHORIZATION.**—No issuer may  
12 make any expenditure for political activities in excess of  
13 \$10,000 in any fiscal year without first obtaining the writ-  
14 ten affirmative authorization for such expenditure by a  
15 majority of all shareholders.

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

21 “(c) **FIDUCIARY DUTY; LIABILITY.**—A violation of  
22 subsection (a) shall be considered a breach of a fiduciary  
23 duty of the officers and directors who authorized such an  
24 expenditure. The officers and directors who authorize such  
25 an expenditure without first obtaining such authorization

1 of shareholders shall be jointly and severally liable in any  
2 action brought in any court of competent jurisdiction to  
3 any shareholder or class of shareholders for the amount  
4 of such expenditure.

5 “(d) EXEMPTION FOR CERTAIN MEDIA.—The provi-  
6 sions of this section shall not apply to an issuer whose  
7 sole business is the publication or broadcasting of news,  
8 commentary, literature, music, entertainment, artistic ex-  
9 pression, scientific, historical or academic works, or other  
10 forms of information. The Commission shall issue such  
11 guidance as it determines necessary or appropriate regard-  
12 ing the extent of the exemption provided by this sub-  
13 section.

14 “(e) DEFINITIONS.—As used in this section the fol-  
15 lowing definitions apply:

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

21 “(2) ISSUE ADVOCACY CAMPAIGN.—The term  
22 ‘issue advocacy campaign’ means any expenditure  
23 for any communication to the general public in-  
24 tended to encourage the public to contact a State or  
25 Federal Government official regarding pending legis-

1 lation, public policy or government rule or regula-  
2 tion, but does not include contributions or expendi-  
3 tures for registered lobbyists employed by the cor-  
4 poration to lobby State or Federal Government offi-  
5 cials directly.

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

11 “(4) EXPENDITURE FOR POLITICAL ACTIVI-  
12 TIES.—

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

15 “(i) expenditures in support of, or op-  
16 position to, any Federal, State, or local  
17 candidate;

18 “(ii) contributions to or expenditures  
19 in support of any political party, com-  
20 mittee, electioneering communication, voter  
21 registration campaign, ballot measure cam-  
22 paign, or an issue advocacy campaign; and

23 “(iii) dues or other payments to trade  
24 associations or other tax exempt organiza-  
25 tions that are, or could reasonably be an-

1           ticipated to be, used for the purposes de-  
2           scribed in subparagraphs (A) and (B).

3           “(B) Such term shall not include—

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

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

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

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

19 **SEC. 4. REPORTING REQUIREMENTS.**

20           Section 13 of the Securities Exchange Act of 1934  
21 (15 U.S.C. 78m) is amended by adding at the end the  
22 following:

23           “(m) **REPORTING REQUIREMENTS RELATING TO**  
24 **CERTAIN POLITICAL EXPENDITURES.—**

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

10                   “(A) the date of the contributions or ex-  
11 penditures;

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

14                   “(C) the name or identity of the candidate,  
15 political party, committee, electioneering com-  
16 munication, voter registration campaign, ballot  
17 measure campaign or issue advocacy campaign;

18                   “(D) if the expenditures were made for or  
19 against a candidate, including an electioneering  
20 communication, the office sought by the can-  
21 didate and the political party affiliation of the  
22 candidate;

23                   “(E) if the contributions or expenditures  
24 were made for or against a ballot measure, the  
25 purpose of the measure and whether the con-

1           tributions or expenditures were made in support  
2           or opposition to the ballot measure; and

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

8           “(2) PUBLIC AVAILABILITY.—The Commission  
9           shall ensure that, to the greatest extent practicable,  
10          the quarterly reports required by this subsection are  
11          publicly available through the Commission website in  
12          a manner that is searchable, sortable and  
13          downloadable, consistent with the requirements of  
14          section 24.”.

15 **SEC. 5. REPORT.**

16          On an annual basis, the Office of Management and  
17          Budget shall conduct an audit on the compliance or non-  
18          compliance with the requirements of this Act by public  
19          corporations, their management and shareholders, as well  
20          as the effectiveness of the Securities and Exchange Com-  
21          mission in meeting the reporting and disclosure require-  
22          ments of this Act. Not later than April 1 of each year,  
23          the Office of Management and Budget shall submit to the

1 President a report on the audit activities required under  
2 this Act.

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