



## PUBLIC STARTUP COMPANY, INC.

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June 6, 2014

To: Mary Jo White, Chair  
Elizabeth M. Murphy, Secretary  
Charles Kwon, Office of Chief Counsel,  
Division of Corporation Finance  
Securities and Exchange Commission  
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From: Jason Coombs, Co-Founder and CEO  
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Re: File No. S7-11-13, <http://www.gpo.gov/fdsys/pkg/FR-2014-01-23/pdf/2013-30508.pdf>

JOBS Act legislation URL <http://www.gpo.gov/fdsys/pkg/BILLS-112hr3606enr/pdf/BILLS-112hr3606enr.pdf>

This comment addresses constitutionality of revisions to federal securities regulation pursuant to Title IV of the JOBS Act. Unlawful demands have been made by members of the House of Representatives for the Commission to remove state securities preemption provisions contained within the proposed Rule under Title IV commonly known as Regulation A+. The demand letter from Stephen F. Lynch, et al, is located at:

<http://www.sec.gov/comments/s7-11-13/s71113-114.pdf>

Furthermore, as highlighted in my prior Comment Letter, certain state securities regulators have used actual “fighting words” and have made potentially-criminal threats including threats of violence or a civil war in planned retaliation if the Commission includes any preemption language in its final Rule for Regulation A+:

<http://www.sec.gov/comments/s7-11-13/s71113-86.pdf>

As highlighted in other of my prior Comment Letters, the Securities and Exchange Commission is a bizarre political manifestation within the American system of regulations and laws. Many industry observers have long viewed the SEC as inept or corrupt because it has never truly been empowered with the funding or the law enforcement powers that are actually required to achieve any meaningful degree of regulation. Conflicts of interest, the revolving door between the regulator and its regulated industry, and explicit protections of an unconstitutional nature for people who are wealthy to the detriment of everyone else are the SEC's legacy.

Failures of the SEC's workers in the past do not mean they will continue to fail in the present or the future. I have urged the Commission to adopt a new policy of publishing a constitutional law analysis in connection with its proposed regulations much like the manner in which economic analysis is published and the manner in which federal law requires such analysis such as to ensure that small businesses are not unduly harmed or burdened by regulations which are primarily intended to address systemic problems or risks inherent to very large companies and the “currency-like” securities that those companies have the power to issue.

It must be remembered that securities are a form of self-issued fiat currency. As a matter of constitutional law, securities span a range of legal issues from private property rights, freedom of speech and association, freedom from invasion of privacy or unreasonable practices of search and seizure. Securities are also, in essence, an exemption to the constitutional authority exclusively granted to Congress to mint a currency.

<http://www.usmint.gov/education/historianscorner/?action=history>

The history of securities can be traced starting in the Roman Republic or the East India Company, and can be analyzed from many different points of view, but in questioning the constitutionality of prohibitions on the marketing and sale of securities there is only one question that matters: does the constitution explicitly protect regular people who need to speak publicly and form new relationships in order to raise new capital?

The answer to this question is obviously YES, everyone has a constitutional right to speak publicly and to form new relationships. A startup is precisely this: speaking and relating with other people who are willing to believe that something new should be created in the economy for the benefit of stakeholders, customers and the stability of our economy, our governments and our way of life in America. There has never been any doubt that the constitution expressly protects the right of every person to launch a new startup.

Article I Section 8 of the constitution expressly authorizes Congress to regulate interstate Commerce, to coin Money, and to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

[http://en.wikipedia.org/wiki/United\\_States\\_Constitution#Seven\\_Articles](http://en.wikipedia.org/wiki/United_States_Constitution#Seven_Articles)

[http://en.wikipedia.org/wiki/Article\\_One\\_of\\_the\\_United\\_States\\_Constitution#Section\\_8:\\_Powers\\_of\\_Congress](http://en.wikipedia.org/wiki/Article_One_of_the_United_States_Constitution#Section_8:_Powers_of_Congress)

These and the other powers enumerated in the constitution are, by definition, POWERS TO GOVERN THE STATES. Any power not enumerated or reserved to the federal government by the constitution belongs to the states. This is the heart of Federalism, the evolving relationship between federal and state government.

[http://en.wikipedia.org/wiki/Federalism\\_in\\_the\\_United\\_States](http://en.wikipedia.org/wiki/Federalism_in_the_United_States)

Congress absolutely, exclusively and unilaterally possesses the power to regulate all interstate Commerce, including offers or sales of securities. This power does not permit Congress to infringe constitutional rights which are reserved for the people of the states nor does it permit Congress to ignore its own legal precedent.

In response to the widespread infringement of constitutional rights to the detriment of large groups of people throughout our nation, the Civil Rights Act of 1964 applied this power to outlaw discrimination based on race, color, religion or national origin when interstate commerce is being conducted especially in the case of offers of temporary lodging, food, entertainment and other necessary services that everyone in our nation should know ahead of time, before we depart our homes and travel to another state, will be available to us upon our arrival at our destination. If we reside in one state and need or want products or services OR SECURITIES offered in another state, Congress has the power to regulate both the offers made to us and our purchases thereof. In the post-Civil Rights Act America that we all take for granted today, we do not expect Congress to abuse this constitutional power in order to deprive us of our constitutional rights, rather we expect Congress to wisely apply this power to protect our rights and to reasonably regulate abuses especially acts of criminal fraud that may victimize us or mistreat us as though we are lower-class citizens who are less deserving of equal protection or fair treatment within civil society just because of who we are.

[http://en.wikipedia.org/wiki/Civil\\_Rights\\_Act\\_of\\_1964](http://en.wikipedia.org/wiki/Civil_Rights_Act_of_1964)

The Securities and Exchange Commission simply **MUST** get this right. The SEC must not fail to uphold the constitutional protections for regular people who are trying honestly and diligently to simply get new things off the ground together in a startup. The JOBS Act Rules must go into effect using the SEC's best judgment.

I urge the Commission to adopt a final Rule that provides for the preemption envisioned by the proposed Rule, because without such preemption Title IV of the JOBS Act cannot achieve a federal regulation at all and it will only end up being a reminder to securities issuers that they need to read and comply with state law in every state where investors might purchase the issuers' securities. The JOBS Act obviously did not intend to create a meaningless reminder for issuers that they must comply with state regulations when they offer and sell unregistered securities, and members of Congress could not possibly have misunderstood the necessity for a measure of state preemption when they voted to instruct the SEC to craft an appropriate Rule that would help JUMPSTART OUR BUSINESS STARTUPS. As mentioned in my prior Comment Letter, it is totally understandable that the members of the House of Representatives who voted against language that would have REQUIRED the SEC to preempt state regulations for all Regulation A+ Offerings did not consider it appropriate to assert the power of Congress to overpower the will of the states to this degree. In voting, members of Congress spoke on behalf of the states they represent. The message was clear: the SEC was instructed to enact Rules that would actually create meaningful JOBS Act exemption FOR STARTUPS, to apply SEC expertise to craft Rules that would not include an unreasonable degree of broad preemption.

For a few members of Congress today to assert, in the demand letter from Stephen F. Lynch, et al, that the SEC does not have the authority to preempt state regulation to protect issuers or investors in Regulation A+ Offerings is nonsense. The SEC obviously has such authority, it having clearly been granted previously by Congress as highlighted in my prior Comment Letter. Although the final Rule for Regulation A+ does need some revision from the text of the proposed Rule, it is perfectly clear that preemption of state review **MUST** be a feature of the final Reg A+ Rule. The degree of preemption must not be too “broad” but rather must be “narrow” as requested by Congress, but it simply **MUST** solve core problems **FOR STARTUPS**. Otherwise there will be no JOBS Act Rule, and Congress will have micromanaged the implementation of Title IV to death thanks to a few Representatives who joined with a mob and signed up to “Lynch” Regulation A+.

Members of Congress should stop advocating Lynchings of startups and startup co-founders. We need to be provided with an on-ramp to capital markets for lifting legitimate new ventures off the ground. The first few hundred thousand dollars that almost every startup spends goes to the non-trivial task of repairing the inept, defective thinking of its founders and bringing its first products or services up to minimum viable status. While Congress and state securities regulators may wish to micromanage this painful process from afar, it would be completely unconstitutional to continue to deprive members of the general public the right to invest and to continue to deprive startups the right to raise capital publicly, within narrow limits of state preemption such as those which the SEC determines in its best judgment to be appropriate and necessary.

I urge the Commission to preempt state regulation of securities offerings for offerings of up to a smaller maximum offering size, such as \$500,000 per year, if in its best judgment the SEC deems it necessary to cave into political pressure and threats from members of Congress and state regulators. Teams of people who see opportunity to build startups together can get off the ground with this amount of funding. Startups that qualify their Regulation A+ Offerings with the SEC should be permitted to offer and sell securities to any member of the general public, in any state, up to these limits – this would be a “narrow” preemption. The “window” for JOBS Act Regulation A+ Initial Public Offerings would never need to “close” the way that the IPO “window” closes on the listed national market stock exchanges based on market conditions, yet the size of this “window” would be small enough that it would be difficult for investors to hurt themselves.

Every person who “travels” to another state to buy securities engages in interstate commerce, whether they physically travel or form this relationship through the telephone, Internet and “the mails.” While Congress does have power to prohibit non-Accredited investors from purchasing securities via interstate commerce, doing so is an affront to the Civil Rights Act and other legal precedent, and it violates constitutional rights.

I hope that the SEC will go to battle on behalf of startups everywhere against the attempts of Congress and state securities regulators to preserve the status quo and to Lynch the JOBS Act Rule. The current regulation which outlaws interstate Offerings of securities by startups and startup co-founders is unconstitutional. This unconstitutional prohibition is the central purpose of the 1933 Securities Act and the 1934 Exchange Act, which the SEC has more or less preserved and failed to correct to restore constitutionally-protected freedom for startups to start up for the last 80 years with the exception of ineffective and mismanaged experiments such as Rule 504 known as the “Seed Capital Exemption” which caused harm to startups during the 1990s.

It is essential for the JOBS Act to become something more than another botched experiment like Rule 504. Congress should stop the Lynching and accept the SEC's best judgment on what appears to be necessary and important for startups to get a boost from being allowed to form investor relationships with members of the general public after qualifying with the SEC. It was clearly Congressional intent to permit limited preemption, for limited amounts of capital to be raised by qualifying startups when unregistered securities are sold to “qualified purchasers.” The fact that Congress declined to define “qualified purchasers” but the fact that Congress obviously did not intend “qualified purchasers” to be “Accredited investors” says very clearly that it was the intent of the legislature to give the SEC the power to decide what the best definition is for “qualified purchasers” participating in Regulation A+ Offerings, so it is upsetting and outrageous that certain members of Congress would turn around and Lynch the SEC for doing so. If Congress wants to revise a definition of “qualified purchasers” it knows that it has the power to do so at any time. Pass a law!

The twenty members of the House of Representatives who signed on to join the Lynch mob letter, blaming the SEC for violating the constitution by moving to preempt state review of Regulation A+ Offerings, have clearly violated the Oath of Office by joining this Lynch mob. In my opinion it is the Commission's job now to defend itself, and all Americans, from these misguided people by explaining that they cannot assert the power to infringe basic human rights and constitutional rights and they cannot endeavor to assist the states in continuing to do so in order to protect banking or securities regulation business monopolies. The SEC should push back on the Lynch mob by requiring the mob to provide proof that there is a necessary and constitutionally-valid interstate commerce regulation function served by continuing to prohibit me from offering and selling my unregistered securities to the general public throughout the United States after my Regulation A+ Offering has been qualified ONLY by the SEC alone. Such prohibition only serves to block the free association and free speech and private property rights of people who are supposed to be protected by the constitution against precisely this form of unreasonable government intervention in our lives.

Stephen F. Lynch, Maxine Waters, Michael E. Capuano, Denny Heck, Keith Ellison, Carolyn B. Maloney, Gwen Moore, Michael H. Michaud, Carol Shea-Porter, Terri A. Sewell, James P. McGovern, Al Green, Ed Perlmutter, Daniel T. Kildee, Ruben Hinojosa, John K. Delaney, Alan Grayson, Bennie G. Thompson, Chellie Pingree and Pedro R. Pierluisi each need to be reminded of their Oath of Office. They each swore an oath to support and defend the Constitution of the United States against all enemies, foreign and domestic. The SEC needs to explain to these Representatives that the only way to protect constitutional rights of normal Americans, the natural persons of this nation, while simultaneously regulating interstate commerce in reasonable and necessary ways particularly with respect to the large-scale economic activity of wealthy corporate persons, is to support and defend our freedoms including the freedom of every startup company to seek new financial support and new investor relationships with members of the general public who choose to deem themselves “qualified” in their own opinion to participate in a Regulation A+ Offering without startup issuers or investors being required first to pay bribes or protection money to the outrageous and illegal racketeering conspiracy that 80 years of this Commission's malfeasance has produced. See:

<http://history.house.gov/Institution/Origins-Development/Oath-of-Office/>

The twenty-Representative Lynch mob asserted in its Letter dated June 3, 2014 that only “a small universe of sophisticated investors who are deemed to be 'qualified purchasers'” should be permitted to invest in Regulation A+ Offerings that are qualified solely by the SEC, and that it was the “clear and expressed intent of Congress that state authority to review these offerings be preserved.” However this assertion is obviously false. The Congressional debate prior to final approval of the JOBS Act legislation made it perfectly clear that the existing “small universe” of Accredited investors was NOT the audience for Regulation A+ Offerings which would be deemed eligible for general solicitation and general advertising. Title II of the JOBS Act, now Regulation D Rule 506(c), was obviously and clearly ALREADY granting this freedom to offer and to sell unregistered securities publicly without state review or regulation provided that only these Accredited investors be allowed to purchase the advertised securities. If the Lynch mob is correct, then why was Title IV of the JOBS Act included in the final legislation? It makes no sense to interpret “qualified purchaser” to mean “Accredited investor” and therefore the Lynch mob is clearly mistaken. Perhaps these members of the House of Representatives simply failed to comprehend what it was that they were voting on when they voted to approve the JOBS Act. That would be understandable, since this is overly-complicated subject matter that the Commission has never truly attempted to make clear because the Commission has historically been much more concerned about defending and protecting the outrageous and illegal organized crime racket that the SEC created than defending and protecting the American people or the constitution.

The Federal Regulation of Securities Committee (the “Committee”) of the Business Law Section (the “Section”) of the American Bar Association (the “ABA”) submitted a Comment Letter on April 3, 2014 which expressed very strong support for preemption of state review for Regulation A+ Offerings. See:

<http://www.sec.gov/comments/s7-11-13/s71113-99.pdf>

“In our view, the Commission’s proposed rules go a long way toward creating a cost-effective exempt

offering process that is appropriately tailored to smaller, emerging companies. ... We support the Commission's proposal to provide for the preemption of state securities law registration and qualification requirements for securities offered or sold to "qualified purchasers," defined as all offerees of securities in a Regulation A offering and all purchasers in a Regulation A Tier 2 offering. More specifically, we strongly endorse the Commission's proposal to define the term "qualified purchaser" under Section 18(b)(3) of the Securities Act to include (i) all offerees of securities in a Regulation A offering, and (ii) all purchasers in a Regulation A Tier 2 offering. We believe that this approach, in conjunction with other provisions of Regulation A as it is proposed to be amended, would provide substantial protection to offerees and investors in Regulation A offerings while easing compliance burdens and reducing transaction costs for Regulation A issuers. For these reasons, we believe that this proposal is consistent with the Commission's mandate pursuant to the JOBS Act to update and expand Regulation A to make it more useful and attractive for smaller companies seeking to raise capital without registering under the Securities Act."

In my opinion, the members of the Lynch mob should defer to the expertise of the ABA and the SEC on this point. The state preemption being proposed by the Commission is not only reasonable, it is also essential in order to reform the ridiculously-confusing, defective and corrupt existing securities regulations promulgated by the SEC and state securities regulators under the 1933 Securities Act and 1934 Exchange Act. It is time for this reform to restore freedoms and constitutional rights which were unreasonably infringed for the last 80 years. The federal government has a duty to prohibit the states from infringing basic economic freedom. I believe that the Commission should use the Lynch mob as a teaching moment, to demonstrate that the U.S. Constitution empowers all of us, even the least among us in society including the Securities and Exchange Commission, to assert rights which our government cannot (forever) infringe without being reigned in.

I believe the Commission should give additional consideration to regulating purchases of Regulation A+ securities where those purchases are made with a view to distribution resale. It is obvious that free-trading securities marketplaces such as the Over The Counter markets or national market exchanges that already or that may soon exist for Regulation A+ securities trading are going to be targets for manipulation and greed. Purchasers of Regulation A+ securities who expect to be able to liquidate their free-trading securities via such marketplaces for an immediate profit pose an unreasonable risk, in my opinion, to both investors and to the companies whose securities are being dumped onto the market in this fashion. I do not believe that Regulation A+ securities should become a dumping ground for liquidating newly-issued securities into the hands of retail investors or speculative day traders who refuse to participate materially in direct investment relationships. The Commission should be very concerned about this dynamic, and regulate appropriately, to ensure that the only purchases made with a view to immediate redistribution are conducted by reputable regulated investment banking or broker/dealer intermediaries or else the Commission should prohibit any purchaser from purchasing Regulation A+ securities if they are purchasing with a view toward distribution.

Emphasizing my previous recommendations for the SEC to be the escrow agent for all JOBS Act Offerings, the SEC should expressly permit issuers to do their own sales and marketing of Regulation A+ Offerings so that every startup and startup co-founder will understand that the SEC is facilitating direct public offerings within the limited preemption of state regulation established by Regulation A+ which imposes strict limits on how much each investor can invest per annum. The SEC should carefully consider prohibiting the use of broker/dealer intermediaries or investment banking firms when preemption of state law occurs under these Regulation A+ mechanisms, to make it clear that Regulation A+ free-trading securities come exclusively from the issuer itself and are meant to facilitate direct investor relationships rather than being intended to facilitate a new liquid market in conventional exchange-listed registered securities context wherein liquid securities that resemble self-issued fiat currencies are traded through regulated intermediaries. It is a valid question, from the Commission's point of view and from the perspective of Congress, whether any resale transactions should be permitted at all in Regulation A+ securities before those securities are registered. If resales are going to be allowed by the final Rule, with preemption of state securities regulation, then clearly some reasonable regulatory constraint is required to address abuses or potential for fraud via intermediaries. **Today is the 80<sup>th</sup> Anniversary of the SEC. Happy Birthday! Now defend the constitution like an adult.** > For the SEC's E-Spotlight on its own birthday celebration, visit: <http://www.sec.gov/spotlight/sec-80.shtml> <