

AMERICANS FOR PROSPERITY®

2111 Wilson Boulevard, Suite 350 • Arlington, VA 22201 • 703.224.3200 • Fax: 703.224.3201

January 25, 2012

By email: rule-comments@sec.gov

Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington D.C. 20549

Re: File No. 4-637, Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities

Dear Ms. Murphy:

We are deeply concerned that the above-referenced petition is an attempt to sidestep the legitimate legislative and judicial branches of the United States Government and effect a major change in public policy via a backdoor regulatory power grab.

The free speech rights of citizens are not forfeited when they organize themselves as corporations or labor unions, as the Supreme Court affirmed in *Citizens United v. FEC*. Moreover, efforts to chill speech through forced disclosure requirements subject individuals and companies to potential political retribution, which is why the Supreme Court upheld the right of advocacy organizations to protect the anonymity of their donors and supporters in *NAACP v. Alabama*.

Efforts at the Federal Elections Commission (FEC) to limit and regulate political speech have been contentious and struck down by the Supreme Court repeatedly in recent years. It is outrageous for the Securities and Exchange Commission to even consider doing an end-run around Congress, the courts, and the FEC by creating for itself a new mission to regulate political speech.

There is no evidence that shareholders broadly support any such requirement. In fact, the petition cites favorably that in 2011 shareholder proposals for disclosure of political spending “enjoyed, on average 32.5 percent support.” In other words, fully 67.5 percent of shareholders do not support such disclosure. To force it via regulatory fiat is therefore directly contrary to the principle of shareholder democracy. This proposal to get the SEC into the business of regulating political speech cannot therefore be justified as in the interests of shareholders.

Filings from 15 Senate Democrats, led by New Jersey Senator Robert Menendez, and 43 House Democrats, led by Massachusetts Rep. Michael Capuano, urged you to take the unprecedented action of transforming the SEC into a political speech regulator. Both

letters reference legislation, the so-called Shareholder Protection Act, designed to regulate political speech by requiring prior shareholder approval of all political spending, broadly defined to include bona fide issue advocacy.

This legislation has just 48 cosponsors in the House and just 10 in the Senate, both far short of the number of votes needed for passage. Rep. Capuano has suggested in a comment that the legislation “could serve as a model for the SEC.” However, the SEC should not be in the business of implementing legislation that has not been duly approved by the House and Senate and signed by the President, or had a veto overridden. To do so would mock the Constitution and the Commission’s proper role in enforcing the laws, not writing them.

Given the highly contested and controversial nature of this proposal to impose restrictions on free speech, we urge you to exercise restraint and to disregard the above-named petition.

Sincerely,

A handwritten signature in blue ink, appearing to read 'PK' followed by a long horizontal stroke.

Phil Kerpen
Vice President, Policy
Americans for Prosperity

A handwritten signature in blue ink, appearing to read 'Slonegan' followed by a long horizontal stroke.

Steven Lonegan
State Director
Americans for Prosperity-New Jersey