

111th CONGRESS  
2d Session  
**H. R. 4790**

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

**IN THE HOUSE OF REPRESENTATIVES**

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**A BILL**

To amend the Securities Exchange Act of 1934 to require shareholder authorization before a public company may make certain political expenditures, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Shareholder Protection Act of 2010'.

**SEC. 2. FINDINGS.**

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.
- (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 in making political contributions or expenditures affecting Federal governance and public policy. Requiring the express approval of a corporation's shareholders prior to making political contributions or expenditures will establish necessary accountability.

**SEC. 2. SHAREHOLDER APPROVAL OF CORPORATE POLITICAL ACTIVITY.**

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

**SEC. 14A. SHAREHOLDER APPROVAL OF CERTAIN POLITICAL EXPENDITURES.**

(a) Shareholder Authorization for Political Expenditures- Any solicitation of any proxy or consent or authorization in respect of any security of an issuer shall--

(1) contain a description of the specific nature of any expenditures for political activities proposed to be made by the issuer for the forthcoming fiscal year, to the extent the specific nature is known to the issuer and including the total amount of such proposed expenditures; and

(2) provide for a separate shareholder vote to authorize such proposed expenditures in such amount.

(b) Restriction on Expenditures- No issuer shall make any expenditure for political activities in any fiscal year unless--

(1) such expenditure is of the nature of those proposed by the issuer pursuant to subsection (a)(1); and

(2) authorization for such expenditures has been granted by votes representing a majority of outstanding shares pursuant to subsection (a)(2).

(c) Fiduciary Duty; Liability- A violation of subsection (b) 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) Definition of Expenditure for Political Activities- As used in this section:

(1) The term 'expenditure for political activities' means--

(A) an independent expenditure, as such term is defined in section 301(17) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(17));

(B) contributions to any political party, committee, or electioneering communication, as such term is defined in section 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and

(C) dues or other payments to trade associations or other tax exempt organizations that are, or could reasonably be anticipated to be, used for the purposes described in subparagraph (A).

(2) Such term shall not include--

(A) direct lobbying efforts through registered lobbyists employed or hired by the issuer;

(B) communications by an issuer to its shareholders and executive or administrative personnel and their families; or

(C) the establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation.'

### **SEC. 3. DISCLOSURE OF PROXY VOTES BY INSTITUTIONAL INVESTORS.**

Section 13(f) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(f)) is amended by redesignating paragraph (5) as paragraph (7) and inserting after paragraph (4) the following:

“(5) DISCLOSURE OF VOTES- Each institutional investment manager subject to this subsection shall include in the reports required under this subsection, at least annually, a statement of how it voted on any shareholder vote provided for under section 14A(a) that occurred since the manager's last such statement, unless such vote is otherwise required to be reported publicly by rule or regulation of the Commission. Not later than 6 months after the date of enactment of this paragraph, the Commission shall issue rules and regulations to implement this paragraph.

“(6) SAFE HARBOR FOR CERTAIN DIVESTMENT DECISIONS- Notwithstanding any other provision of Federal or State law, no person may bring any civil, criminal, or administrative action against any institutional investment manager, or any employee, officer, or director thereof, based solely upon a decision of the investment manager to divest from, or not to invest in, securities of an issuer because of expenditures for political activities made by that issuer.’.

### **SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.**

(a) Required Vote- The Securities Exchange Act of 1934 is amended by adding after section 16 the following new section:

#### **SEC. 16A. REQUIRED BOARD VOTE ON CORPORATE EXPENDITURES FOR POLITICAL ACTIVITIES.**

“(a) Listing on Exchanges- Effective not later than 180 days after the date of enactment of this section, the Commission shall, by rule, direct the national securities exchanges and national securities associations to prohibit the listing of any class of equity security of an issuer that is not in compliance with the requirements of any portion of subsection (b).

“(b) Requirement for Vote in Corporate Bylaws- The corporate bylaws of an issuer shall expressly provide for a vote of the directors of the issuer on any individual expenditure for political activities (as such term is defined in section 14A(d)(1)) in excess of \$50,000. An issuer shall make publicly available the individual votes of the directors required by the preceding sentence within 48 hours of the vote, including in a clear and conspicuous location on the Internet website of the issuer.’.

(b) No Effect on Determination of Coordination With Candidates or Campaigns- For purposes of determining whether an expenditure for political activities by an issuer under the Securities Exchange Act of 1934 is an independent expenditure

under the Federal Election Campaign Act of 1971, the expenditure may not be treated as made in concert or cooperation with, or at the request or suggestion of, any candidate or committee solely on the grounds that any director of the issuer voted on the expenditure as required under section 16A(b) of the Securities Exchange Act of 1934 (as added by subsection (a)).

## **SEC. 5. 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(c)(1)) made during the preceding quarter and the individual votes by board members authorizing such expenditures. Such a report shall be filed with the Commission and provided to shareholders and shall include--
    - `(A) the date of the expenditures;
    - `(B) the amount of the expenditures;
    - `(C) the name or identity of the candidate, political party, committee, or electioneering communication, as such term is defined in section 304(f)(3)(A) of the Federal Election Campaign Act of 1971 (2 U.S.C. 434(f)(3)(A)); and
    - `(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.
  - `(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.**

The Comptroller General of the United States shall annually conduct a study on the compliance with the requirements of this Act by public corporations and their management, as well as the effectiveness of the Securities and Exchange Commission in meeting the reporting and disclosure requirements of this Act. Not later than April 1 of each year, the Comptroller General shall submit to Congress a report of such study.

## **SEC. 6. SEVERABILITY.**

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be

unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provision or amendment to any person or circumstance shall not be affected thereby.