111TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPT. 111–620
Part 1

SHAREHOLDER PROTECTION ACT OF 2010

SEPTEMBER 22, 2010.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. FRANK of Massachusetts, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4790]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (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, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows:

Strike all after the enacting clause and insert the following:

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. 3. SHAREHOLDER APPROVAL OF CORPORATE POLITICAL ACTIVITY.

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

"SEC. 14C. SHAREHOLDER APPROVAL OF CERTAIN POLITICAL EXPENDITURES AND DISCLOSURE OF VOTES OF INSTITUTIONAL INVESTORS.

"(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 not previously approved, 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) REQUIREMENTS FOR 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 individual or class of individuals who held shares at the time such expenditure was made for an amount equal to 3 times 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) an electioneering communication, as such term is defined in section 304(f)(3) of such Act (2 U.S.C. 434(f)(3)) and any other public communication (as such term is defined in section 301(22) of such Act (2 U.S.C. 431(22))) that would be an electioneering communication if it were a broadcast, cable, or satellite communication; or

"(C) dues or other payments to trade associations or other tax exempt organizations that are, or could reasonably be anticipated to be, used or

transferred to another association or organization for the purposes described in subparagraph (A) or (B).

"(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 and administration of contributions to a separate segregated fund to be utilized for political purposes by a corporation.

"(e) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it voted on any shareholder vote pursuant to subsection (a), 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 section, the Commission shall issue rules and regulations to implement this subsection. Such rules shall require that such report be made not later than 30 days after such a vote and be made available to the public through the EDGAR system as soon as practicable.

"(f) 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. This subsection shall not apply to any institutional investment manager, or any employee, officer, or director thereof, unless the institutional investment manager makes disclosures in accordance with regulations prescribed by the Commission.".

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 14C(d)(1)) in excess of $50,000, or any expenditure that makes the total amount spent by the issuer for the particular election (as such term is defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1))) $50,000 or more. 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:

"(r) REPORTING REQUIREMENTS RELATING TO CERTAIN POLITICAL EXPENDITURES.—

"(1) QUARTERLY REPORTS.—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 14C(d)(1)) made during the preceding quarter and the individual votes by board members authorizing such expenditures as required under section 16A(b). Such a report shall be filed with the Commission and provided to shareholders and shall include—

"(A) the date of each expenditure;

"(B) the amount of each expenditure;

"(C) if the expenditure was made for or against a candidate, the name of the candidate, the office sought by and the political party affiliation of the candidate; and

"(D) the name or identity of trade associations or other tax-exempt organizations which receive dues or other payments as described in section 14C(d)(1)(B).

"(2) ANNUAL REPORTS.—Not later than 180 days after the date of enactment of this subsection, the Commission shall, by rule, require each issuer to include in its annual report to shareholders an annual summary of all expenditures for political activities (as such term is defined in section 14C(d)(1)) made during the preceding year in excess of $10,000.

"(3) DISCLOSURE OF MATERIALS PURCHASED BY POLITICAL EXPENDITURES.—The Commission shall, by rule, require each issuer to obtain and disclose in the reports required under this section, any materials created with or purchased by any expenditure for political activities (as such term is defined in section 14C(d)) made by the issuer. Such rule shall also require that each issuer disclose such materials in a clear and conspicuous location on the Internet website of the issuer within 48 hours of obtaining the materials.

"(4) 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 and through the EDGAR system in a manner that is searchable, sortable, and downloadable, consistent with the requirements of section 24.".

SEC. 6. REPORTS.

The Securities and Exchange Commission shall annually assess the compliance of public corporations and their management with the requirements of the amendments made by this Act, and shall transmit to Congress an annual report of its findings. The Comptroller General of the United States shall periodically evaluate and report to Congress on the effectiveness of the Securities and Exchange Commission's oversight of the reporting and disclosure requirements of the amendments made by this Act.

SEC. 7. 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.

PURPOSE AND SUMMARY

The Shareholder Protection Act of 2010 (H.R. 4790) is a response to the U.S. Supreme Court's decision in *Citizens United* v. *Federal Election Commission*, 558 U.S. 50 (2010).[1] In Citizens United, the Court held that corporations have a First Amendment right to spend unlimited amounts of general treasury funds on political expenditures and electioneering communications. The ruling invalidated longstanding provisions in U.S. election laws and raised fresh concerns about corporate influence in our political process.

To address those concerns, the Shareholder Protection Act gives shareholders of public companies the right to vote on the company's annual budget for political expenditures. The bill makes that right enforceable through actions for breach of fiduciary duty against officers and directors who authorize political expenditures that are not in the nature of those set forth in the annual budget. The bill also requires a board vote on certain individual political expenditures, including those exceeding $50,000. The bill enhances transparency by requiring public companies to make quarterly and annual reports regarding their political expenditures, and by requiring institutional investment managers to publicly report their proxy votes on political expenditures within 30 days.

[1] Available at http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf.

BACKGROUND AND NEED FOR LEGISLATION

U.S. election laws have long prohibited corporations from using general treasury funds to pay for independent expenditures that advocate the election or defeat of political candidates. On January 21, 2010, the U.S. Supreme Court invalidated those provisions in Citizens United. In its 5–to–4 decision, the Court held in effect that corporations have a First Amendment right to spend unlimited amounts of money from their general treasuries to influence Federal elections through independent expenditures and electioneering communications. In arriving at its decision, the Court overturned precedents that had limited corporate influence in politics for decades.[2]

The case arose when Citizens United, a non-profit corporation, sought injunctive and declaratory relief against enforcement of the Bipartisan Campaign Reform Act (BCRA). BCRA prohibited corporations and labor unions from using general treasury funds—as opposed to funds segregated in political action committees or PACs—either for "electioneering communications" or for express advocacy in favor of or in opposition to a candidate. Citizens United had produced a 90-minute film entitled Hillary: The Movie, which was critical of presidential candidate Hillary Clinton. Citizens United wanted to advertise and broadcast the film on cable television, but feared that doing so would subject it to civil and criminal penalties under BCRA. It therefore sought judicial protection.

The Supreme Court sided with Citizens United, struck down the statutory provisions at issue, and established the broad principle that, under the First Amendment, independent corporate expenditures on political advocacy may not be prohibited.

The decision generated significant controversy. Many criticized it as a major setback in the effort to ensure that corporations do not unduly influence the electoral process. Some commentators suggested that short of public financing of political campaigns or a constitutional amendment, little could be done legislatively to undo Citizens United. In testimony before the House Judiciary Committee, however, Professor Laurence Tribe observed that "despite the blow they [the majority of justices] struck against the interests of ordinary citizens and genuine self-government, they did not entirely foreclose meaningful avenues of legislative relief short of constitutional amendment."[3]

In keeping with Professor Tribe's comment, Members of the House and Senate introduced a number of bills that through various means sought to mitigate the impact of Citizens United on political campaigns and to curb the influence of corporations on our elections. Among them is H.R. 4790.

H.R. 4790 has two goals: (1) it gives shareholders of public companies more control over a company's political expenditures, and (2) it subjects those expenditures to greater transparency. In terms of shareholder control, H.R. 4790 requires a public company's proxy solicitations to include a description of the nature and amount of political expenditures planned for the ensuing fiscal year. The bill

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[2] For example, see *Austin* v. *Michigan Chamber of Commerce*, 494 U.S. 652 (2000), and *McConnell* v. *Federal Election Commission*, 540 U.S. 93 (2003).

[3] Prepared Testimony of Laurence H. Tribe, House Judiciary Committee, February 2, 2010, available at http://judiciary.house.gov/hearings/pdf/Tribe100203.pdf

prohibits companies from making any political expenditures unless they are consistent with the types of expenditures described in the proxy materials and unless they have been approved by a majority shareholder vote. The bill makes officers and directors jointly and severally liable for breach of fiduciary duty if they authorize political expenditures without shareholder approval, and it provides for treble damages.

The bill also requires a board vote on any individual political expenditure exceeding $50,000, or any expenditure causing the total amount spent in an election to exceed $50,000. Those votes must be posted on the issuer's website within 48 hours.

H.R. 4790 promotes transparency in several ways. The bill requires public companies to make quarterly public disclosure of all expenditures for political activities during the preceding quarter, along with the individual votes of board members authorizing such expenditures. Those reports must include copies of any materials created or purchased with political expenditures, and must be posted on the company's website within 48 hours. In addition, public companies will be required to include in their annual reports a summary of all political expenditures over $10,000.

The bill requires institutional investment managers to report at least annually on how they voted on a public company's proposed political expenditures. Those reports must be made within 30 days and placed on the EDGAR system as soon as practicable.

The bill defines "political expenditures" as independent expenditures, electioneering and other public communications, and payments to trade associations to fund political activity. Direct lobbying, communications by issuers to shareholders, and establishment of political action committees are excluded from the definition.

HEARINGS

The Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises held a hearing entitled "Corporate Governance After Citizens United" on March 11, 2010. At the hearing, the following witnesses testified:

- Professor John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia Law School
- Mr. Karl Sandstrom, Of Counsel, Perkins Cole
- Ms. Ann Yerger, Executive Director, Council of Institutional Investors
- Professor J.W. Verret, Assistant Professor of Law, George Mason University School of Law
- Ms. Nell Minow, Editor and Co-Founder, The Corporate Library
- Professor Michael Klausner, Nancy and Charles Munger Professor of Business and Professor of Law, Stanford Law School
- Mr. Jan Baran, Partner, Wiley Rein LLP

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 28, 2010, and on July 29, 2010, ordered H.R. 4790, the Share-

holder Protection Act of 2010, as amended, favorably reported to the House by a record vote of 35 yeas and 28 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Frank to report the bill, as amended, to the House with a favorable recommendation was agreed to by a record vote of 35 yeas and 28 nays (Record vote no. FC–143). The names of Members voting for and against follow:

RECORD VOTE NO. FC–143

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)			
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez				Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones			
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa				Mr. Garrett (NJ)		X	
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch				Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant			
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

During consideration of the bill, the following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment by Mr. Grayson (and Mr. Capuano), no. 1a, to the amendment offered by Mr. Capuano, no. 1, a manager's amend-

ment, was agreed to by a record vote of 34 yeas and 25 nays (FC–136):

RECORD VOTE NO. FC–136

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		X	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)			
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez				Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo			
Mr. Ackerman	X			Mr. Jones			
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa				Mr. Garrett (NJ)		X	
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch				Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell			
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant			
Ms. Moore (WI)				Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey			
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter	X			Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance		X	
Mr. Foster	X						
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Ms. Jenkins, no. 2, striking section 14A(d)(C) (relating to the definition of 'expenditure for political activities') was not agreed to by a record vote of 25 yeas and 37 nays (Record vote no. FC–137):

RECORD VOTE NO. FC–137

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo			
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		

RECORD VOTE NO. FC–137—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant			
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick	X						
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Carson, no. 5, regarding liability amount equal to 3 times expenditure, was agreed to by a record vote of 33 yeas and 30 nays (Record vote no. FC–138):

RECORD VOTE NO. FC–138

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X			Mr. Bachus		x	
Mr. Kanjorski	X			Mr. Castle		X	
Ms. Waters	X			Mr. King (NY)			
Mrs. Maloney	X			Mr. Royce		X	
Mr. Gutierrez	X			Mr. Lucas		X	
Ms. Velázquez				Mr. Paul		X	
Mr. Watt	X			Mr. Manzullo		X	
Mr. Ackerman	X			Mr. Jones			
Mr. Sherman	X			Mrs. Biggert		X	
Mr. Meeks	X			Mr. Miller (CA)		X	
Mr. Moore (KS)	X			Mrs. Capito		X	
Mr. Capuano	X			Mr. Hensarling		X	
Mr. Hinojosa				Mr. Garrett (NJ)		X	
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy	X			Mr. Gerlach		X	
Mr. Baca	X			Mr. Neugebauer		X	
Mr. Lynch				Mr. Price (GA)		X	
Mr. Miller (NC)	X			Mr. McHenry		X	
Mr. Scott	X			Mr. Campbell		X	
Mr. Green	X			Mr. Putnam		X	
Mr. Cleaver	X			Mrs. Bachmann		X	
Ms. Bean	X			Mr. Marchant			

RECORD VOTE NO. FC–138—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Moore (WI)	X			Mr. McCotter		X	
Mr. Hodes	X			Mr. McCarthy		X	
Mr. Ellison	X			Mr. Posey		X	
Mr. Klein	X			Ms. Jenkins		X	
Mr. Wilson	X			Mr. Lee		X	
Mr. Perlmutter		X		Mr. Paulsen		X	
Mr. Donnelly		X		Mr. Lance		X	
Mr. Foster		X					
Mr. Carson	X						
Ms. Speier	X						
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler	X						
Ms. Kilroy	X						
Mr. Driehaus	X						
Ms. Kosmas	X						
Mr. Grayson	X						
Mr. Himes	X						
Mr. Peters	X						
Mr. Maffei	X						

An amendment by Mr. Castle, no. 6, relating to exemption under state law, was not agreed to by a record vote of 25 yeas and 38 nays (Record vote no. FC–139):

RECORD VOTE NO. FC–139

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant			
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					

RECORD VOTE NO. FC–139—Continued

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Hensarling, no. 8, relating to the effective date, was not agreed to by a record vote of 26 yeas and 37 nays (Record vote no. FC–140):

RECORD VOTE NO. FC–140

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant			
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick	X						
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment in the nature of a substitute by Mr. Castle, no. 9, was not agreed to by a record vote of 25 yeas and 38 nays (Record vote no. FC–141):

RECORD VOTE NO. FC–141

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant			
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

An amendment by Mr. Garrett, no. 10, relating to public plan transparency, was not agreed to by a record vote of 25 yeas and 38 nays (Record vote no. FC–142):

RECORD VOTE NO. FC–142

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Castle	X		
Ms. Waters		X		Mr. King (NY)			
Mrs. Maloney		X		Mr. Royce	X		
Mr. Gutierrez		X		Mr. Lucas	X		
Ms. Velázquez				Mr. Paul	X		
Mr. Watt		X		Mr. Manzullo	X		
Mr. Ackerman		X		Mr. Jones			
Mr. Sherman		X		Mrs. Biggert	X		
Mr. Meeks		X		Mr. Miller (CA)	X		
Mr. Moore (KS)		X		Mrs. Capito	X		
Mr. Capuano		X		Mr. Hensarling	X		
Mr. Hinojosa				Mr. Garrett (NJ)	X		

RECORD VOTE NO. FC–142

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Clay				Mr. Barrett (SC)			
Mrs. McCarthy		X		Mr. Gerlach	X		
Mr. Baca		X		Mr. Neugebauer	X		
Mr. Lynch				Mr. Price (GA)	X		
Mr. Miller (NC)		X		Mr. McHenry	X		
Mr. Scott		X		Mr. Campbell	X		
Mr. Green		X		Mr. Putnam	X		
Mr. Cleaver		X		Mrs. Bachmann	X		
Ms. Bean		X		Mr. Marchant			
Ms. Moore (WI)		X		Mr. McCotter	X		
Mr. Hodes		X		Mr. McCarthy	X		
Mr. Ellison		X		Mr. Posey	X		
Mr. Klein		X		Ms. Jenkins	X		
Mr. Wilson		X		Mr. Lee	X		
Mr. Perlmutter		X		Mr. Paulsen	X		
Mr. Donnelly		X		Mr. Lance	X		
Mr. Foster		X					
Mr. Carson		X					
Ms. Speier		X					
Mr. Childers		X					
Mr. Minnick		X					
Mr. Adler		X					
Ms. Kilroy		X					
Mr. Driehaus		X					
Ms. Kosmas		X					
Mr. Grayson		X					
Mr. Himes		X					
Mr. Peters		X					
Mr. Maffei		X					

The following other amendments were also considered:

An amendment by Mr. Capuano, no. 1, a manager's amendment, as amended by the Grayson amendment, no. 1a, was agreed to by a voice vote.

An amendment by Mr. Grayson (and Mr. Capuano), no. 3, relating to disclosure of materials purchased by political expenditures, was agreed to by a voice vote.

An amendment in the nature of a substitute by Mrs. Biggert, no. 4, was not agreed to by a voice vote.

An amendment by Mr. Capuano, no. 7, relating to the annual nature of the proxy requirement, as modified, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

H.R. 4790 is a response to the decision of the U.S. Supreme Court in the Citizens United case and has two goals: (1) giving shareholders of public companies more control over a company's political expenditures, and (2) subjecting those expenditures to greater transparency.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

SEPTEMBER 14, 2010.

Hon. BARNEY FRANK,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4790, the Shareholder Protection Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4790—Shareholder Protection Act of 2010

H.R. 4790 would require corporations that are registered with the Securities and Exchange Commission (SEC) to provide shareholders an opportunity to vote on the corporation's proposed expenditures for certain political activities for the upcoming year. Further, the bill would prohibit security exchanges from listing stocks of corporations that do not require the board of directors to approve political expenditures over $50,000 or any expenditure that would cause the amount spent on political activities to exceed $50,000 in a fiscal year. The SEC would be required to develop regulations to enforce the new requirements and to prepare an annual report that assesses compliance.

Based on information from the SEC, CBO estimates that developing and enforcing the new requirements in H.R. 4790 would not significantly increase spending subject to appropriation. Enacting H.R. 4790 could increase collections of civil and criminal penalties, thus increasing federal revenues and direct spending; therefore, pay-as-you-go procedures apply. However, CBO estimates that such collections and spending would not be significant in any year.

The requirements on corporations would impose intergovernmental and private-sector mandates, as defined in the Unfunded Mandates Reform Act (UMRA). In addition, the bill would impose reporting requirements on investment managers and preempt state securities laws. Based on information from the SEC, CBO estimates that the costs of complying with those mandates would be small.

H.R. 4790 also would prevent public or private investors from seeking damages from investment managers on grounds that the manager made investment decisions based on a corporation's political activities. Because of uncertainty about the number of such claims that would be filed, CBO cannot estimate the cost of that mandate and, consequently, cannot determine whether the aggregate costs of intergovernmental or private-sector mandates in the bill would exceed the annual thresholds established in UMRA ($70 million and $141 million, respectively, in 2010, adjusted annually for inflation).

The CBO staff contacts for this estimate are Susan Willie (for federal costs) and Elizabeth Cove Delisle and Brian Prest (for the intergovernmental and private-sector impact). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States) and clause 3 (relating to the power to regulate interstate commerce).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4790 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Sec. 1. Short title

This section designates the short title of the bill as the "Shareholder Protection Act of 2010."

Sec. 2. Findings

This section sets forth several findings that support giving shareholders the right to vote on corporate political expenditures and making those expenditures more transparent.

Sec. 3. Shareholder approval of corporate political activity

This section amends the Securities Exchange Act of 1934 (Exchange Act) to require a separate shareholder vote on political expenditures by public companies. Proxy solicitations must include a description of the specific nature and the total amount of the proposed expenditures for political activities to be made for the upcoming fiscal year, except for previously approved expenditures. Public companies may not make political expenditures unless they are in the nature of those described in the shareholder proxy and authorized by votes representing a majority of outstanding shares.

This section makes officers and directors jointly and severally liable for breach of fiduciary duty if they authorize expenditures in violation of the section. This liability is for three times the amount of any unauthorized expenditure and is owed to any shareholders who held shares at the time the unauthorized expenditures were made.

In addition, this section defines the term "expenditure for political activities" to include independent expenditures as defined by the Federal Election Campaign Act (FECA); "electioneering communications" and other "public communications" (such as printed materials) as defined by FECA; and dues or other payments to trade associations or other tax-exempt organizations that "are, or could reasonably be anticipated to be," used or transferred to another association or organization for independent expenditures or electioneering communications. The term, however, excludes direct lobbying efforts through registered lobbyists; communications to shareholders, executives, and administrative personnel and their families; and funding related to the establishment and administration of political action committees.

This section of the bill also amends the Exchange Act to require institutional investment managers to disclose at least annually how they voted on corporate political expenditures. Those reports must be made within 30 days after the votes are taken and made available through the EDGAR system as soon as practicable. The U.S. Securities and Exchange Commission (SEC) must issue rules within six months of enactment to implement this disclosure requirement.

This section also creates a safe harbor from any civil, criminal, or administrative action against any institutional investment manager based solely upon the investment manager's decision to divest from, or not to invest in, securities of a company because of political expenditures made by that company. The safe harbor is unavailable, however, unless the investment manager complies with any disclosure obligations applicable under the SEC's rules.

Sec. 4. Required board vote on corporate expenditures for political activities

This section amends the Exchange Act to require the SEC, within 180 days of enactment, to issue rules directing national securities exchanges and associations to prohibit the listing of any securities of companies that do not expressly provide for a board of directors vote on certain political expenditures. Board votes are required on any individual expenditure for political activities in excess of $50,000, or on any expenditure causing the total amount spent in an election to exceed $50,000. Companies must make the individual votes of the directors publicly available within 48 hours, and must post the votes clearly on the company's website.

This section also clarifies that a director's vote on a political expenditure does not affect whether or not the expenditure is deemed to be an independent expenditure within the meaning of FECA.

Sec. 5. Reporting requirements

This section requires the SEC, within 180 days of enactment, to amend its reporting rules so that public companies must disclose to shareholders, on a quarterly basis, any political expenditures made during the preceding quarter and the individual votes of board members authorizing such expenditures. These reports must include the date and amount of each expenditure; the name, party, and office of any candidate who was the subject of an expenditure; and the identity of any trade association or other organization that received dues or other payments.

The SEC must ensure that the quarterly reports are publicly available through the SEC's website and through the EDGAR system. Companies must include in those reports any materials created or purchased with political expenditures, and must post those materials on their websites within 48 hours.

Section 5 also requires the SEC to issue rules obligating public companies to include in their annual reports a summary of all political expenditures over $10,000.

Sec. 6. Reports

This section requires the SEC to make an annual assessment of compliance with the Act by public companies and their managements, and to report its findings to Congress. It also requires the Comptroller General to periodically evaluate and report to Congress on the SEC's oversight of the reporting and disclosure requirements in the Act.

Sec. 7. Severability

This section clarifies that if any provision of the bill is held to be unconstitutional, then the remainder of the bill is not affected.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECURITIES EXCHANGE ACT OF 1934

TITLE I—REGULATION OF SECURITIES EXCHANGES

* * * * * * *

PERIODICAL AND OTHER REPORTS

SEC. 13. (a) * * *

* * * * * * *

(r) REPORTING REQUIREMENTS RELATING TO CERTAIN POLITICAL EXPENDITURES.—

(1) QUARTERLY REPORTS.—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 14C(d)(1)) made during the preceding quarter and the individual votes by board members authorizing such expenditures as required under section 16A(b). Such a report shall be filed with the Commission and provided to shareholders and shall include—

(A) the date of each expenditure;

(B) the amount of each expenditure;

(C) if the expenditure was made for or against a candidate, the name of the candidate, the office sought by and the political party affiliation of the candidate; and

(D) the name or identity of trade associations or other tax-exempt organizations which receive dues or other payments as described in section 14C(d)(1)(B).

(2) ANNUAL REPORTS.—Not later than 180 days after the date of enactment of this subsection, the Commission shall, by rule, require each issuer to include in its annual report to shareholders an annual summary of all expenditures for political activities (as such term is defined in section 14C(d)(1)) made during the preceding year in excess of $10,000.

(3) DISCLOSURE OF MATERIALS PURCHASED BY POLITICAL EXPENDITURES.—The Commission shall, by rule, require each issuer to obtain and disclose in the reports required under this section, any materials created with or purchased by any expenditure for political activities (as such term is defined in section 14C(d)) made by the issuer. Such rule shall also require that each issuer disclose such materials in a clear and conspicuous location on the Internet website of the issuer within 48 hours of obtaining the materials.

(4) 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 and through the EDGAR system in a manner that is searchable, sortable, and downloadable, consistent with the requirements of section 24.

* * * * * * *

SEC. 14C. SHAREHOLDER APPROVAL OF CERTAIN POLITICAL EXPENDITURES AND DISCLOSURE OF VOTES OF INSTITUTIONAL INVESTORS.

(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 not previously approved, 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) REQUIREMENTS FOR 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 individual or class of individuals who held shares at the time such expenditure was made for an amount equal to 3 times 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) an electioneering communication, as such term is defined in section 304(f)(3) of such Act (2 U.S.C. 434(f)(3)) and any other public communication (as such term is defined in section 301(22) of such Act (2 U.S.C. 431(22))) that would be an electioneering communication if it were a broadcast, cable, or satellite communication; or

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

(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 and administration of contributions to a separate segregated fund to be utilized for political purposes by a corporation.

(e) DISCLOSURE OF VOTES.—Every institutional investment manager subject to section 13(f) shall report at least annually how it

voted on any shareholder vote pursuant to subsection (a), 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 section, the Commission shall issue rules and regulations to implement this subsection. Such rules shall require that such report be made not later than 30 days after such a vote and be made available to the public through the EDGAR system as soon as practicable.

(f) 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. This subsection shall not apply to any institutional investment manager, or any employee, officer, or director thereof, unless the institutional investment manager makes disclosures in accordance with regulations prescribed by the Commission.

* * * * * * *

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 14C(d)(1)) in excess of $50,000, or any expenditure that makes the total amount spent by the issuer for the particular election (as such term is defined in section 301(1) of the Federal Election Campaign Act of 1971 (2 U.S.C. 431(1))) $50,000 or more. 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.

* * * * * * *

DISSENTING VIEWS

The following represents the views of the Republican Members of the Committee on the following issues, consistent with H.R. 4790, Shareholder Protection Act of 2010.

The Majority's designation of H.R. 4790 as the "Shareholder Protection Act" is a misnomer. The bill, conceived of as a legislative response to the January 21, 2010 Supreme Court decision in *Citizens United* v. *Federal Election Commission,* 558 U.S. 50 (2010), is less about protecting shareholders and more about favoring the free speech rights of some groups (labor unions) over others (corporations). Under the legislation, public companies would have to prepare political expenditure plans, present the plan to and seek approval from the board, prepare the proxy, and schedule a shareholder vote well in advance of the end of each fiscal year. H.R. 4790 would deny public corporations the flexibility to engage in the political process, and prejudice their ability to advocate for or against legislative or regulatory initiatives while still allowing unions to freely engage in these activities.

Corporate boards and management have fiduciary duties to the company and to the shareholders, yet H.R. 4790 would hamstring these obligations and weaken corporations. If H.R. 4790 is enacted, public corporations will be forced to predict all political expenditures for an upcoming fiscal year many months in advance to ensure that shareholders approve of the plan before the end of the company's fiscal year. This will severely limit the free speech of all corporations by prohibiting them from reacting to new or unexpected issues that impact their business, ultimately eroding shareholder value.

The Majority confidently asserts that H.R. 4790 would not impose additional costs on public companies because corporations would simply add another line to their annual proxy statement. However, to properly align this new shareholder vote with the political calendar, a corporation would need to schedule this vote at the end of its fiscal year, not, as the Majority suggests, at its annual meeting, which is typically held during the first quarter of each year. Corporations would then have to prepare and distribute a separate proxy statement for shareholders to express their approval or disapproval of the proposed political expenditures. It is an open question whether the U.S. Securities and Exchange Commission (SEC) has the requisite expertise to provide guidance to issuers as to what are "expenditures for political activities." It is unclear how a corporation would go about proposing the "specific nature" of political expenditures to satisfy the requirements of this bill, especially given the fluidity of the political and electoral process.

By giving shareholders veto power over all political expenditures, this legislation also undermines the longstanding "business judg-

ment rule," which insulates the decisions of a corporation's board of directors from legal second-guessing as long as the board has engaged in a "rational or good faith effort to advance corporate interest." The bill could open the door to requiring shareholder approval of other matters historically entrusted to corporate boards' discretion, such as charitable donations or advertising expenses. Moreover, H.R. 4790 would preempt state corporate law and make expenditures which shareholders have not approved a violation of the corporation's fiduciary duty to its shareholders. This is a serious departure from the long-established primacy of state corporate law. As former Supreme Court Justice Lewis Powell wrote in *CTS Corp.* v. *Dynamics Corp. of America,* 481 U.S. 69 (1987), "no principle of corporation law and practice is more firmly established than a State's authority to regulate domestic corporations, including the authority to define the voting rights of shareholders."

Section 4 of H.R. 4790 creates a new provision in the Securities Exchange Act of 1934 to require all issuers to disclose the votes of individual directors and force the U.S. equity exchanges to delist public companies that do not disclose their board votes. Such a requirement is not found in any state corporate law for any board decision. Board roll call votes are not required to declare bankruptcy, sell the corporation or its assets, accept a buyout, or oppose a takeover, which are all more significant events for any publicly traded company than whether to make a specific political expenditure.

As troubling is a provision added during the Committee markup that would award triple damages to a shareholder if an officer or director authorizes a political expenditure without first obtaining the approval of a majority of shareholders. The damages awarded would be triple the amount of the political expenditure. In effect, these damages are exemplary and punitive. This provision is therefore inconsistent with the original intent of the Securities Exchange Act of 1934, which makes no mention of exemplary or treble damages. Neither statute nor case law supports any instance in which a shareholder has been allowed to recover treble damages as a result of the actions of a director or officer, and there is no historical support for awarding treble damages in the context of authorizing expenditures for advertisements. While treble damages are awarded in antitrust and RICO cases, those cases are aimed at punishing criminal behavior. As noted above, awarding treble damages in this context goes against the original intent of the '34 Act, and inappropriately penalizes conduct when the wrong alleged is a civil injury, not a crime or misdemeanor.

The "Shareholder Protection Act" applies to corporations, but notably, it does not apply to unions. There is no provision in Federal law that allows union members to vote to either approve or disapprove their union's political expenditures. Unions are the single largest contributor to political campaigns in the country. Unions and their political action committees claim to have spent nearly $450 million in the 2008 presidential race, and have accounted for approximately 40% of campaign-related spending this year, as opposed to corporations, which account for less than 15%. Unions reportedly "plan an enormous spending spree to help ensure Democratic control of Congress" after this fall's elections. On June 26, 2010 Larry Scanlon, political director for the American Federation

of State, County, and Municipal Employees ("AFSCME"), acknowledged the benefits conferred by the *Citizens United* decision on organizations like his when he said that "the *Citizens United* case has taken the lid off, and so we can use our soft money for express advocacy directly." Three unions alone—AFSCME, the AFL-CIO, and the Service Employees International Union—expect to spend more than $150 million in the 2010 mid-term elections.

To provide union members with the ability to decide whether their union dues should be used for political purposes or not, Republicans strongly supported Representative Hensarling's amendment prohibiting H.R. 4790 from taking effect until H.R. 5860, the "Union Member Protection Act," is first enacted. H.R. 5860 applies the framework established in H.R. 4790 to unions, creating parity by giving actual union members (not just fee-paying nonmembers) a vote on their union's political contributions. Unfortunately, the Majority voted almost entirely along party lines to reject this equitable application of the *Citizens United* decision to labor unions and publicly traded companies despite clear guidance from the Court that both were covered by its decision.

The Committee ordered H.R. 4790 favorably reported without holding a single legislative hearing to examine its far-reaching impact on corporate governance and its chilling effect on political free speech. The "Shareholder Protection Act" is a flawed response in search of a problem that does not exist. Republicans believe that the House should reject this ill-considered legislation and send it back to the Committee on Financial Services for a more thorough review of its potential unintended consequences.

SPENCER BACHUS.
SCOTT GARRETT.
KEVIN MCCARTHY.
JEB HENSARLING.
PETER KING.
J. GRESHAM BARRETT.
RANDY NEUGEBAUER.
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TOM PRICE.
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