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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 SENATE OF THE UNITED STATES

Mr. MENENDEZ (for himself, Mr. MERKLEY, Mr. BOOKER, Mr. BLUMENTHAL, Ms. HIRONO, Mr. LEAHY, Ms. WARREN, Mr. DURBIN, Mr. VAN HOLLEN, Mrs. GILLIBRAND, Ms. KLOBUCHAR, Mr. MARKEY, Mrs. SHAHEEN, Ms. BALDWIN, Mr. WHITEHOUSE, and Mrs. FEINSTEIN) introduced the following bill; which was read twice and referred to the Committee on

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 2021”.

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SEC. 2. FINDINGS.

Congress finds that—

(1) corporations make significant political contributions and expenditures that directly or indirectly influence the election of candidates and support or oppose political causes;

(2) decisions to use corporate funds for political contributions and expenditures are usually made by corporate boards and executives, rather than shareholders;

(3) corporations, acting through boards and executives, are obligated to conduct business for the best interests of their owners, the shareholders;

(4) historically, shareholders have not had a way to know, or to influence, the political activities of the corporations they own;

(5) shareholders and the public have a right to know how corporate managers are spending company funds to make political contributions and expenditures benefitting candidates, political parties, and political causes;

(6) corporations should be accountable to shareholders in making political contributions or expenditures affecting Federal governance and public policy; and
(7) requiring a corporation to obtain the express approval of shareholders before making political contributions or expenditures will establish necessary accountability.

SEC. 3. SHAREHOLDER APPROVAL OF CORPORATE POLITICAL ACTIVITY.

(a) IN GENERAL.—The Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) is amended by inserting after section 14B (15 U.S.C. 78n–2) the following:

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

“(a) DEFINITIONS.—In this section—

“(1) the term ‘expenditure for political activities’—

“(A) means—

“(i) an independent expenditure (as defined in section 301(17) of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101(17)));

“(ii) an electioneering communication (as defined in section 304(f)(3) of that Act (52 U.S.C. 30104(f)(3))) and any other public communication (as defined in section 301(22) of that Act (52 U.S.C.
that would be an election-
eering communication if it were a broad-
cast, cable, or satellite communication; or

“(iii) dues or other payments to trade
associations or organizations described in
section 501(c) of the Internal Revenue
Code of 1986 and exempt from tax under
section 501(a) of that Code that are, or
could reasonably be anticipated to be, used
or transferred to another association or or-
ganization for the purposes described in
clause (i) or (ii); and

“(B) does not include—

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

“(ii) communications by an issuer to
its shareholders and executive or adminis-
trative personnel and their families; or

“(iii) the establishment, administra-
tion, and solicitation of contributions to a
separate segregated fund to be utilized for
political purposes by a corporation; and

“(2) the term ‘issuer’ does not include an in-
vestment company that is registered under section 8

“(b) **SHAREHOLDER AUTHORIZATION FOR POLITICAL EXPENDITURES.**—Each solicitation of proxy, consent, or authorization by an issuer with a class of equity securities registered under section 12 shall—

“(1) contain—

“(A) a description of the specific nature of any expenditure for political activities proposed to be made by the issuer for the forthcoming fiscal year that has not been authorized by a vote of the shareholders of the issuer, to the extent the specific nature is known to the issuer; and

“(B) the total amount of expenditures for political activities proposed to be made by the issuer for the forthcoming fiscal year; and

“(2) provide for a separate vote of the shareholders of the issuer to authorize such expenditures for political activities in the total amount described in paragraph (1).

“(c) **VOTE REQUIRED TO MAKE EXPENDITURES.**—No issuer may make an expenditure for political activities in any fiscal year unless that expenditure—
“(1) is of the nature of those proposed by the issuer in subsection (b)(1); and

“(2) has been authorized by a vote of the majority of the outstanding shares of the issuer in accordance with subsection (b)(2).

“(d) FIDUCIARY DUTY; LIABILITY.—

“(1) FIDUCIARY DUTY.—A violation of subsection (c) by an issuer shall be considered to be a breach of a fiduciary duty of any officer or director of the issuer who authorized the expenditure for political activities described in that subsection.

“(2) LIABILITY.—An officer or director of an issuer who authorizes an expenditure for political activities in violation of subsection (c) shall be jointly and severally liable in—

“(A) any action brought in a court of competent jurisdiction to any person or class of persons that held shares at the time the expenditure for political activities was made; and

“(B) an amount that is equal to 3 times the amount of the expenditure for political activities.

“(e) DISCLOSURE OF VOTES.—

“(1) DISCLOSURE REQUIRED.—Each institutional investment manager that is subject to section
13(f) shall disclose not less frequently than annually how the institutional investment manager voted on any shareholder vote under subsection (b)(2), unless the vote is otherwise required by rule of the Commission to be reported publicly.

“(2) RULES.—Not later than 180 days after the date of enactment of this section, the Commission shall issue rules to carry out this subsection that require that a disclosure required under paragraph (1)—

“(A) be made not later than 30 days after the date on which a vote described in that paragraph is held; and

“(B) 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, if an institutional investment manager makes the disclosures required under subsection (e), no person may bring any civil, criminal, or administrative action against the institutional investment manager, or any employee, officer, or director of the institutional investment manager, based solely upon a decision of the investment manager to divest from, or not to invest in, securities of
an issuer due to an expenditure for political activities made by the issuer.”.

(b) TECHNICAL AND CONFORMING AMENDMENT.—

Section 3(a)(8) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(8)) is amended by striking “The term” and inserting “Except as otherwise expressly provided, the term”.

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


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

“(a) DEFINITIONS.—In this section—

“(1) the term ‘election’ has the meaning given the term in section 301 of the Federal Election Campaign Act of 1971 (52 U.S.C. 30101); and

“(2) the terms ‘expenditure for political activities’ and ‘issuer’ have the meanings given the terms in section 14C(a).

“(b) LISTING ON EXCHANGES.—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 (e).

“(c) Requirement for Vote in Corporate By-
laws.—

“(1) Vote required.—The bylaws of an
issuer shall expressly provide for a vote of the board
of directors of the issuer on any expenditure for po-
litical activities—

“(A) in an amount that is more than
$50,000; and

“(B) that would result in the total amount
spent by the issuer for a particular election to
be more than $50,000.

“(2) Public availability.—An issuer shall
make the votes of each member of the board of di-
rectors of the issuer for a vote required under para-
graph (1) publicly available not later than 48 hours
after the vote, including in a clear and conspicuous
location on the internet web site of the issuer.

“(d) No effect on determination of coordi-
nation with candidates or campaigns.—For purposes
of the Federal Election Campaign Act of 1971 (52 U.S.C.
30101 et seq.), an expenditure for political activities by
an issuer shall not be treated as made in concert or co-
operation with, or at the request or suggestion of, any can-
didate or committee solely because a member of the board
of directors of the issuer voted on the expenditure as re-
quired under this section.”.

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:

“(s) REPORTING REQUIREMENTS RELATING TO Cer-
tain Political Expenditures.—

“(1) Definitions.—In this subsection, the
terms ‘expenditure for political activities’ and
‘issuer’ have the meanings given the terms in section
14C(a).

“(2) Quarterly reports.—

“(A) Reports required.—Not later than
180 days after the date of enactment of this
subsection, the Commission shall amend the re-
porting rules under this section to require each
issuer with a class of equity securities reg-
istered under section 12 to submit to the Com-
mission and the shareholders of the issuer a
quarterly report containing—
“(i) a description of any expenditure for political activities made during the preceding quarter;

“(ii) the date of each expenditure for political activities;

“(iii) the amount of each expenditure for political activities;

“(iv) the votes of each member of the board of directors of the issuer authorizing the expenditure for political activity, as required under section 16A(c);

“(v) if the expenditure for political activities was made in support of or in opposition to a candidate, the name of the candidate and the office sought by, and the political party affiliation of, the candidate; and

“(vi) the name or identity of trade associations or organizations described in section 501(c) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code that receive dues or other payments as described in section 14C(a)(1)(A)(iii).
“(B) Public Availability.—The Commission shall ensure that, to the greatest extent practicable, the quarterly reports required under this paragraph are publicly available through the internet website of the Commission and through the EDGAR system in a manner that is searchable, sortable, and downloadable, consistent with the requirements under section 24.

“(3) 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 the annual report of the issuer to shareholders a summary of each expenditure for political activities made during the preceding year in excess of $10,000, and each expenditure for political activities for a particular election if the total amount of such expenditures for that election is in excess of $10,000.”.

SEC. 6. REPORTS.

(a) Securities and Exchange Commission.—The Securities and Exchange Commission shall—

(1) conduct an annual assessment of the compliance of issuers and officers and members of the boards of directors of issuers with sections 13(s),
1. 14C, and 16A of the Securities Exchange Act of 1934, as added by this Act; and

2. (2) submit to Congress an annual report of containing the results of the assessment under paragraph (1).

(b) Government Accountability Office.—The Comptroller General of the United States shall periodically evaluate and report to Congress on the effectiveness of the oversight by the Securities and Exchange Commission of the reporting and disclosure requirements under sections 13(s), 14C, and 16A of the Securities Exchange Act of 1934, as added 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.