

117TH CONGRESS
1ST SESSION

S. _____

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.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Shareholder Protection
5 Act of 2021”.

1 **SEC. 2. FINDINGS.**

2 Congress finds that—

3 (1) corporations make significant political con-
4 tributions and expenditures that directly or indi-
5 rectly influence the election of candidates and sup-
6 port or oppose political causes;

7 (2) decisions to use corporate funds for political
8 contributions and expenditures are usually made by
9 corporate boards and executives, rather than share-
10 holders;

11 (3) corporations, acting through boards and ex-
12 ecutives, are obligated to conduct business for the
13 best interests of their owners, the shareholders;

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

17 (5) shareholders and the public have a right to
18 know how corporate managers are spending com-
19 pany funds to make political contributions and ex-
20 penditures benefitting candidates, political parties,
21 and political causes;

22 (6) corporations should be accountable to share-
23 holders in making political contributions or expendi-
24 tures affecting Federal governance and public policy;
25 and

1 30101(22))) that would be an election-
2 eering communication if it were a broad-
3 cast, cable, or satellite communication; or

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

13 “(B) does not include—

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

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

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

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

1 of the Investment Company Act of 1940 (15 U.S.C.
2 80a-8).

3 “(b) SHAREHOLDER AUTHORIZATION FOR POLIT-
4 ICAL EXPENDITURES.—Each solicitation of proxy, con-
5 sent, or authorization by an issuer with a class of equity
6 securities registered under section 12 shall—

7 “(1) contain—

8 “(A) a description of the specific nature of
9 any expenditure for political activities proposed
10 to be made by the issuer for the forthcoming
11 fiscal year that has not been authorized by a
12 vote of the shareholders of the issuer, to the ex-
13 tent the specific nature is known to the issuer;
14 and

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

18 “(2) provide for a separate vote of the share-
19 holders of the issuer to authorize such expenditures
20 for political activities in the total amount described
21 in paragraph (1).

22 “(c) VOTE REQUIRED TO MAKE EXPENDITURES.—
23 No issuer may make an expenditure for political activities
24 in any fiscal year unless that expenditure—

1 “(1) is of the nature of those proposed by the
2 issuer in subsection (b)(1); and

3 “(2) has been authorized by a vote of the ma-
4 jority of the outstanding shares of the issuer in ac-
5 cordance with subsection (b)(2).

6 “(d) FIDUCIARY DUTY; LIABILITY.—

7 “(1) FIDUCIARY DUTY.—A violation of sub-
8 section (c) by an issuer shall be considered to be a
9 breach of a fiduciary duty of any officer or director
10 of the issuer who authorized the expenditure for po-
11 litical activities described in that subsection.

12 “(2) LIABILITY.—An officer or director of an
13 issuer who authorizes an expenditure for political ac-
14 tivities in violation of subsection (c) shall be jointly
15 and severally liable in—

16 “(A) any action brought in a court of com-
17 petent jurisdiction to any person or class of per-
18 sons that held shares at the time the expendi-
19 ture for political activities was made; and

20 “(B) an amount that is equal to 3 times
21 the amount of the expenditure for political ac-
22 tivities.

23 “(e) DISCLOSURE OF VOTES.—

24 “(1) DISCLOSURE REQUIRED.—Each institu-
25 tional investment manager that is subject to section

1 13(f) shall disclose not less frequently than annually
2 how the institutional investment manager voted on
3 any shareholder vote under subsection (b)(2), unless
4 the vote is otherwise required by rule of the Com-
5 mission to be reported publicly.

6 “(2) RULES.—Not later than 180 days after
7 the date of enactment of this section, the Commis-
8 sion shall issue rules to carry out this subsection
9 that require that a disclosure required under para-
10 graph (1)—

11 “(A) be made not later than 30 days after
12 the date on which a vote described in that para-
13 graph is held; and

14 “(B) be made available to the public
15 through the EDGAR system as soon as prac-
16 ticable.

17 “(f) SAFE HARBOR FOR CERTAIN DIVESTMENT DE-
18 CISIONS.—Notwithstanding any other provision of Federal
19 or State law, if an institutional investment manager makes
20 the disclosures required under subsection (e), no person
21 may bring any civil, criminal, or administrative action
22 against the institutional investment manager, or any em-
23 ployee, officer, or director of the institutional investment
24 manager, based solely upon a decision of the investment
25 manager to divest from, or not to invest in, securities of

1 an issuer due to an expenditure for political activities
2 made by the issuer.”.

3 (b) TECHNICAL AND CONFORMING AMENDMENT.—
4 Section 3(a)(8) of the Securities Exchange Act of 1934
5 (15 U.S.C. 78c(a)(8)) is amended by striking “The term”
6 and inserting “Except as otherwise expressly provided, the
7 term”.

8 **SEC. 4. REQUIRED BOARD VOTE ON CORPORATE EXPENDI-**
9 **TURES FOR POLITICAL ACTIVITIES.**

10 The Securities Exchange Act of 1934 (15 U.S.C. 78a
11 et seq.) is amended by inserting after section 16 (15
12 U.S.C. 78p) the following:

13 **“SEC. 16A. REQUIRED BOARD VOTE ON CORPORATE EX-**
14 **PENDITURES FOR POLITICAL ACTIVITIES.**

15 “(a) DEFINITIONS.—In this section—

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

19 “(2) the terms ‘expenditure for political activi-
20 ties’ and ‘issuer’ have the meanings given the terms
21 in section 14C(a).

22 “(b) LISTING ON EXCHANGES.—Not later than 180
23 days after the date of enactment of this section, the Com-
24 mission shall, by rule, direct the national securities ex-
25 changes and national securities associations to prohibit the

1 listing of any class of equity security of an issuer that
2 is not in compliance with the requirements of any portion
3 of subsection (c).

4 “(c) REQUIREMENT FOR VOTE IN CORPORATE BY-
5 LAWS.—

6 “(1) VOTE REQUIRED.—The bylaws of an
7 issuer shall expressly provide for a vote of the board
8 of directors of the issuer on any expenditure for po-
9 litical activities—

10 “(A) in an amount that is more than
11 \$50,000; and

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

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

21 “(d) NO EFFECT ON DETERMINATION OF COORDINA-
22 TION WITH CANDIDATES OR CAMPAIGNS.—For purposes
23 of the Federal Election Campaign Act of 1971 (52 U.S.C.
24 30101 et seq.), an expenditure for political activities by
25 an issuer shall not be treated as made in concert or co-

1 operation with, or at the request or suggestion of, any can-
2 didate or committee solely because a member of the board
3 of directors of the issuer voted on the expenditure as re-
4 quired under this section.”.

5 **SEC. 5. REPORTING REQUIREMENTS.**

6 Section 13 of the Securities Exchange Act of 1934
7 (15 U.S.C. 78m) is amended by adding at the end the
8 following:

9 “(s) REPORTING REQUIREMENTS RELATING TO CER-
10 TAIN POLITICAL EXPENDITURES.—

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

15 “(2) QUARTERLY REPORTS.—

16 “(A) REPORTS REQUIRED.—Not later than
17 180 days after the date of enactment of this
18 subsection, the Commission shall amend the re-
19 porting rules under this section to require each
20 issuer with a class of equity securities reg-
21 istered under section 12 to submit to the Com-
22 mission and the shareholders of the issuer a
23 quarterly report containing—

1 “(i) a description of any expenditure
2 for political activities made during the pre-
3 ceding quarter;

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

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

8 “(iv) the votes of each member of the
9 board of directors of the issuer authorizing
10 the expenditure for political activity, as re-
11 quired under section 16A(c);

12 “(v) if the expenditure for political ac-
13 tivities was made in support of or in oppo-
14 sition to a candidate, the name of the can-
15 didate and the office sought by, and the
16 political party affiliation of, the candidate;
17 and

18 “(vi) the name or identity of trade as-
19 sociations or organizations described in
20 section 501(c) of the Internal Revenue
21 Code of 1986 and exempt from tax under
22 section 501(a) of such Code that receive
23 dues or other payments as described in
24 section 14C(a)(1)(A)(iii).

1 “(B) PUBLIC AVAILABILITY.—The Com-
2 mission shall ensure that, to the greatest extent
3 practicable, the quarterly reports required
4 under this paragraph are publicly available
5 through the internet website of the Commission
6 and through the EDGAR system in a manner
7 that is searchable, sortable, and downloadable,
8 consistent with the requirements under section
9 24.

10 “(3) ANNUAL REPORTS.—Not later than 180
11 days after the date of enactment of this subsection,
12 the Commission shall, by rule, require each issuer to
13 include in the annual report of the issuer to share-
14 holders a summary of each expenditure for political
15 activities made during the preceding year in excess
16 of \$10,000, and each expenditure for political activi-
17 ties for a particular election if the total amount of
18 such expenditures for that election is in excess of
19 \$10,000.”.

20 **SEC. 6. REPORTS.**

21 (a) SECURITIES AND EXCHANGE COMMISSION.—The
22 Securities and Exchange Commission shall—

23 (1) conduct an annual assessment of the com-
24 pliance of issuers and officers and members of the
25 boards of directors of issuers with sections 13(s),

1 14C, and 16A of the Securities Exchange Act of
2 1934, as added by this Act; and

3 (2) submit to Congress an annual report of con-
4 taining the results of the assessment under para-
5 graph (1).

6 (b) GOVERNMENT ACCOUNTABILITY OFFICE.—The
7 Comptroller General of the United States shall periodically
8 evaluate and report to Congress on the effectiveness of the
9 oversight by the Securities and Exchange Commission of
10 the reporting and disclosure requirements under sections
11 13(s), 14C, and 16A of the Securities Exchange Act of
12 1934, as added by this Act.

13 **SEC. 7. SEVERABILITY.**

14 If any provision of this Act, an amendment made by
15 this Act, or the application of such provision or amend-
16 ment to any person or circumstance is held to be unconsti-
17 tutional, the remainder of this Act, the amendments made
18 by this Act, and the application of such provision or
19 amendment to any person or circumstance shall not be af-
20 fected thereby.