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U.S. House Meddling With SEC to Block Disclosure of Political Contributions

The provision could thwart ongoing efforts by the SEC to address the practice of securities professionals making political contributions to the government officials with whom they work.

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The House Committee on Appropriations recently [adopted](#) a budget for an assortment of financial agencies. Tucked inside the 150-plus pages of legislative prose is a provision that would deny the Securities and Exchange Commission the funding needed to issue “any rule, regulation, or order regarding the disclosure of political contributions.”

The provision is an attempt to use the appropriations process to block the SEC from responding to [Citizens United](#), the case that opened the floodgate of political spending by finding that corporate contributions were protected under the First Amendment.

The House adopted the same provision last year, only to see it die in the Senate. If it does so again, let’s hope that the Senate has the same killer instinct and does not let this change slip through during the process of negotiating a final budget with the House.

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The Supreme Court's decision on the Citizens United case open the door to virtually limitless campaign donations by funding groups as long as they don't coordinate with candidates' campaigns.

Calls for Reform

What happens when the Appropriations Committee meddles in the SEC's disclosure process?

Put aside for the moment the compelling case for why the SEC should act on the issue and require more disclosure. Many have already made this case, including Justice Anthony Kennedy in what amounted to a [command](#) in Citizens United to provide effective disclosure of contributions, the more than 1.2 million [supportive comments](#) on a [petition](#) asking the SEC to adopt a rule in this area, and the recent salvo of letters calling for reform, including letters [from two former SEC chairs \(and one former commissioner\)](#), [144 business leaders, entrepreneurs, investors and philanthropists](#), and more than [70 foundations](#).

Let's just focus on the immediate consequences of a committee of the House of Representatives using the appropriations process to micromanage the system of corporate disclosure administered by the SEC.

The ban on rules regulating the disclosure of political contributions was slipped into the appropriations bill with no serious public vetting. There were no hearings on the language, no erudite witnesses to critique the consequences. The SEC has not, apparently, commented publicly on the language. Instead, the Appropriations Committee was left to its own devices in fashioning the applicable requirements. The consequences were predictable.

For one thing, the [language](#) is over-broad and unnecessarily interferes with other areas of the securities laws. The provision does not apply only to political contributions made by public companies but to political contributions of any kind. As a result, the provision would presumably apply to ongoing efforts by the SEC to address the problem of "pay to play," the practice of securities professionals making political contributions to the government officials with whom they work.

The appropriations process is no place for interference in the SEC's oversight of the corporate disclosure process, including disclosure relating to political contributions.

The legislation would also potentially interfere with efforts by the SEC to enforce the Foreign Corrupt Practices Act, a law that prohibits certain payments to foreign government officials. All of these areas could be defunded under the appropriations bill.

The language could even give companies a pass from the SEC on lying about corporate contributions to political campaigns. To the extent companies inaccurately disclose the nature or amount of the contributions, the SEC has the existing authority to sanction them for misleading investors. The commission typically does so by issuing an order setting out the violation and the consequences.

But the language in the appropriations bill would not only prohibit any rules regarding the disclosure of political contributions but also prohibits any orders. The prohibition on orders, therefore, presumably defunds enforcement efforts by the SEC of existing

requirements applicable to political contributions.

A Blunt Approach

At the same time, the language also doesn't really accomplish what the drafters apparently intended.

It is true that the SEC will not, under the legislation, be able to expend funds regarding the adoption of rules or the issuance of orders concerning political contributions. Nothing in the appropriations bill, however, prevents the staff of the SEC from using other, less formal mechanisms to require companies and others to disclose these contributions.

The staff has at its fingertips devices such as "no action" letters and interpretive releases that can influence the disclosure process. These are informal mechanisms that the staff sometimes uses to advise companies on their existing legal obligations.

In 2010, for example, the staff [issued](#) an interpretive release in an effort to clarify disclosure requirements with respect to climate change. The same could be done with respect to political contributions, even with the adoption of the language in the appropriations bill.

Contrast this blunt approach with the obligations imposed on the SEC. To adopt any rule on political contributions, the agency must draft the relevant provisions and submit them to the public for input. Any final rule will need to take into account the full panoply of viewpoints. In other words, the SEC can act only after becoming fully informed and hearing from all sides.

The appropriations process is no place for interference in the SEC's oversight of the corporate disclosure process, including disclosure relating to political contributions. The language in the present bill should be removed and the matter left to the SEC to resolve.

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Greg Darr · University of Hawaii

I 'm not surprised that the House of Representatives now controlled by a GOP majority would do anything possible to help their Wall Street & Banking campaign contributors to avoid those "pesky regulations" that attempt to level the playing field and keep everyone honest. Gaming the system has been in fashion with our political system before most of us were born. This is all been the norm before investigative reporters started to pay attention to the corruption of politics /democracy by the influence of lobbying (bribery). And I would go as far to say both parties are equally guilty in playing this game. The words of Senator/lawyer Boise Penrose who served in Congress from 1897-1921 say it best: "I believe in the division of labor. You send us to Congress; we pass laws under which you make money...and out of your profits, you further contribute to our campaign funds to send us back again to pass more laws to enable you to make more money."

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