

SECURITIES & EXCHANGE COMMISSION (SEC) REGULATION AS A SOLUTION TO CONTROL MONEY IN ELECTIONS

There are four Federal regulatory agencies that have legal authority to curb campaign spending: 1) the Federal Election Commission (FEC), 2) the Internal Revenue Service (IRS), 3) the Federal Communications Commission (FCC) and, 4) Securities and Exchange Commission (SEC).

This article discusses how the Securities and Exchange Commission (SEC) could control the excess of money in politics through regulations and why it is not happening. Other reports cover the other agencies.

Introduction

In his majority opinion in the *Citizens United v FEC* case, Supreme Court Justice Anthony Kennedy wrote,

“With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. ...Shareholders can determine whether their corporation’s political speech advances the corporation’s interests in making profits, and citizens can see whether elected officials are in the pocket of so-called moneyed interests.”¹

The Securities and Exchange Commission (SEC) has the power to issue a rule governing corporate political expenditures and require publicly traded companies to disclose their political spending decisions to shareholders.

In 2011, a group of 10 corporate- and securities-law professors petitioned the Securities and Exchange Commission to require public companies to disclose their political activities, including campaign donations and lobbying efforts.²

In 2013, a coalition of consumer advocates, elected officials, shareholder advocates, pension funds, and campaign finance reform proponents submitted a proposal to the SEC, which amassed a record 640,000-plus public comments (a vast majority in favor of the proposal). The proposal asked for a rule that would require publicly-traded corporations to fully disclose to shareholders all of their political donations, which are currently hidden because they are transferred to tax-exempt groups and trade associations.

¹ CITIZENS UNITED v. FEDERAL ELECTION COMMISSION, US Supreme Court, January 21, 2010, p.55, <http://www.supremecourt.gov/opinions/09pdf/08-205.pdf>

² Bebchuk, Lucian A., et al., "Committee on Disclosure of Corporate Political Spending Petition for Rulemaking", Letter to Elizabeth M. Murphy, August 3, 2011, <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>.

The rule change was on the SEC priority list in 2013 but was dropped from the list of priorities for 2014.^{3,4}

Currently the SEC requires labor unions to disclose their political and non-profit contributions, and the proposal would make public corporations follow the same rule. Opponents of SEC regulation argue that a disclosure rule would infringe on corporations' first amendment rights of free speech and would damage shareholder value as well as creating regulatory overreach.

Proposed Federal Legislation to Facilitate the SEC Ability to Control Money in Politics

Solving the problems related to money in politics by means of regulation requires Congressional support of legislation that protects and/or expands current codes that strengthen oversight and transparency. Agencies meant to carry out that work need to be funded adequately. Some key House and Senate bills related to the SEC's ability to control money in politics, and the legislators who supported them, are listed below. H.R. 446/S.214 are current (2015) bills that are under consideration in committee. The committee chairs determine whether a bill will move past the committee stage.

H.R. 446/S. 214, *Shareholder Protection Act of 2015*, is 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. These bills are in committee: Senate Banking, Housing, and Urban Affairs and House Financial Services (Washington Representative Heck is on the committee)

H.R. 1062 (2013), the *Regulatory Accountability Act*, was a bill "to make it illegal for the SEC to issue any political disclosure regulations applying to companies under its jurisdiction".⁵ This bill was introduced in a previous session of Congress and was passed by the House on May 17, 2013 but was never passed by the Senate. Washington Representatives Hastings, Herrera Beutler, McMorris-Rodgers, and Reichert voted for this legislation; Representatives DeBene, Larsen, Kilmer, McDermott, Smith, and Heck voted nay. The bill was reintroduced in the House in 2014, and there were no votes related to this bill after that.⁶

S. 824/H.R. 1734 (2013), *The Shareholder Protection Act of 2013*, was a bill to amend the Securities Exchange Act of 1934. It would have required the disclosure of the total amount of expenditures a corporation proposed for political activities and provided for a separate shareholder vote to authorize

³ Blumenthal, Paul, "Corporate 'Dark Money' To Get Free Pass After SEC Drops Disclosure Proposal", Huffington Post, December 2, 2013, http://www.huffingtonpost.com/2013/12/02/corporate-dark-money_n_4372574.html, viewed 8/21/15.

⁴ Goad, Benjamin, "SEC Backs off Corporate Giving Regs", The Hill, December 2, 2013, <http://thehill.com/blogs/regwatch/finance/191740-sec-backs-off-corporate-giving-regs>, viewed 8/21/15.

⁵ Confessore, Nicholas, "S.E.C. Is Asked to Require Disclosure of Donations", The New York Times, April 23, 2013, <http://www.nytimes.com/2013/04/24/us/politics/sec-is-asked-to-make-companies-disclose-donations.html>, viewed 8/21/15.

⁶ "H.R. 1062 (113th): SEC Regulatory Accountability Act", GovTrack.us, <https://www.govtrack.us/congress/votes/113-2013/h160>, viewed 8/21/15.

such proposed expenditures. The bill died both in Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services. Identical bills have been introduced every year since 2010, but have not gone anywhere.

The SEC and Federal Budget Struggles In 2015

In 2014, the SEC requested extra funding for their “severe” shortage of examiners and technology upgrades to aid in their expanded and growing responsibilities (Dodd-Frank Act requirements, etc.).⁷ In response to the SEC’s plea, a political struggle over the size of the Federal government’s budget has ensued. The 2015 budget plan proposed by the House and the budget plan proposed by President Obama pertaining to the SEC are summarized below.

Rep. Paul Ryan’s proposed in the 2015 budget plan. The proposed Republican budget seeks to “tighten the belts” of government agencies, including the SEC. Ryan states his resolution “*questions the premise that more funding for the SEC means better, smarter regulation. Adding reams of regulations to the books and scores of regulators to the payrolls will not provide greater transparency, consumer protection, and enforcement for increasingly complex markets.*”⁸ The SEC wanted to hire 639 new staff.

President Obama’s 2015 proposed budget plan.

*The Securities and Exchange Commission would receive \$1.7 billion under President Barack Obama’s fiscal 2015 budget plan, released on February 27, 2014, a 26% increase over the 2014 enacted level of \$1.35 billion. The extra funds would be used to add 639 additional staffers; 316 would be added to the agency’s Office of Compliance Inspections and Examinations, with 240 of those examiners devoted solely to overseeing advisors. Additional funds provided in the budget would also be used to boost investments in technology and enhance the agency’s tips, complaints and referrals system.*⁹

Mary Jo White, former SEC Chair, made a public statement about President Obama’s proposed SEC budget for fiscal year 2015. She said on March 4, 2014,

“I am pleased that the President’s FY 2015 request recognizes the SEC’s need for significant additional resources. The \$1.7 billion requested will be critical for the SEC to fulfill its mission to investors and our markets. It is also important to remember that this funding comes from

⁷ ElBoghdady, Dina, "Congress Slashes SEC’s Funding for Technology Upgrades", The Washington Post, January 16, 2014, http://www.washingtonpost.com/business/economy/congress-slashes-secs-funding-for-technology-upgrades/2014/01/16/15ffacaa-7ebc-11e3-9556-4a4bf7bcbd84_story.html, viewed 8/21/15.

⁸ Waddell, Melanie, "Ryan Budget Seeks to ‘Tighten’ SEC’s Belt", Think Advisor, April 1, 2014, <http://www.thinkadvisor.com/2014/04/01/ryan-budget-seeks-to-tighten-secs-belt>, viewed 8/21/15.

⁹ Waddell, Melanie, "SEC Gets 26% Funding Boost Under Obama’s 2015 Budget", Think Advisor, March 4, 2014, <http://www.thinkadvisor.com/2014/03/04/sec-gets-26-funding-boost-under-obamas-2015-budget>

industry transaction fees and does not take money away from other priorities or contribute to the federal deficit.”¹⁰

SEC funding is increased in the 2015 omnibus appropriations bill in lieu of repeal of a section of the Dodd-Frank Act. The website of McEldrew Young, a law firm in Philadelphia, Pennsylvania, that works on federal issues, succinctly explains the budget process and its results. The controversial deal exchanges increased agency funding for continued federal insurance protection for derivative trading by banks.

“The SEC received an increase of \$250 million in its budget for FY 2015 from FY 2014 levels. Its total FY 2015 budget will be \$1.5 billion, \$200 million short of the agency request of \$1.7 billion. The budget request for a total increase of \$450 million sought to hire additional employees, invest in technology solutions and complete rulemaking required by the Dodd-Frank Act and the JOBS Act.

Dodd-Frank Swaps Push Out: The SEC and CFTC (Commodity Futures Trading Commission) budget increases can be attributed to a deal made to repeal section 716 of the Dodd-Frank Act. The section was commonly referred to as the swaps push out rule. It required banks to move derivatives trading out of their federally insured subsidiaries. The financial health of subsidiaries protected by federally insured deposits allows them significant advantages while trading and could put federal funds at risk. The measure was largely written by Citigroup in advance of the 2015 deadline for implementing the section of the law. The reversal of the swaps push out rule was one of the most controversial aspects of the entire budget. Its addition to the law used the impending deadline for government shutdown. Senator Elizabeth Warren (D-Mass), who was involved in the creation of the U.S. Consumer Financial Protection Bureau, nevertheless marshalled a tremendous amount of opposition to it. A White House statement opposed the section but did not indicate that President Obama would veto the bill because of it.”¹¹

On December 16, 2014, President Barack Obama signed the omnibus appropriations bill (H.R.83–Consolidated and Further Continuing Appropriations Act, 2015) providing funding for government agencies for fiscal year 2015.

Securities and Exchange Commission (SEC) budget challenges in 2016

Shaun Donovan, Director of the Office of Management and Budget, compared SEC funding in the 2016 proposed Congressional budget bill with President Obama’s 2016 proposed budget plan in a letter as follows,

¹⁰ SEC Chair Mary Jo White, *U.S. Securities and Exchange Commission – Public Statement*, March 4, 2014, <http://www.sec.gov/News/PublicStmnt/Detail/PublicStmnt/1370540878567>, viewed 01/12/16

¹¹ “SEC and CFTC Gain, IRS Loses in FY 2015 Budget Bill”, McEldrew Young, <http://www.mceldrewyoung.com/fy-2015-budget-bill/>, viewed 1/10/16.

“Compared to the President’s Budget, the bill cuts funding for the SEC by \$222 million, or 13 percent, hindering its enforcement, examination, and market oversight functions and thereby reducing investor protections. The SEC is fee-funded and its funding level has no impact on the deficit, nor does it impact the amount of funding available for other agencies. While the bill is level with FY 2015 funding, total resources available to the SEC are lower because the bill blocks the SEC from \$75 million in authorized and planned information technology (IT) spending from the agency’s mandatory Reserve Fund, which was established by the Wall Street Reform Act. The cuts also limit the SEC’s ability to respond to the high volume of securities-related misconduct, as the Commission strives to keep pace with industry’s increasing use of new and technologically-complex financial products and services.”¹²

Congress Faced an October 1, 2015 Budget Deadline

Dave Moore, Senior Director of Government Relations for the Association of American Medical Colleges, explained the status of the 2016 appropriations budget in an article titled *“Washington Highlights, Congress Faces Oct. 1 Budget Deadline”*.

“Both the House and Senate Appropriations Committees approved all 12 of their respective fiscal year (FY) 2016 spending bills for the first time in six years, and the House passed six of the measures. But confronted with Democratic opposition to the spending limits currently in place, the Senate has been unable to consider any of the appropriations bills. So far, there are no indications how long the CR (continuing resolution) might last, but some observers have speculated that it might run until mid to late November, when the Congressional Budget Office says Congress will need to raise the limit on the federal debt. Congressional passage of a CR may be complicated by the desire for conservatives to stop federal funding for Planned Parenthood, a move that, if successful, could draw a veto. Ultimately, the fate of the appropriations bills will depend on whether the GOP-led Congress and the White House can agree on a plan that lifts the discretionary spending caps. Democratic leaders have called for negotiations on a budget deal for months, but so far the two sides have not begun discussions.”¹³

¹²Letter to Representative Hal Rogers from Shaun Donovan, Director, Office of Management and Budget, June 16, 2015, <https://www.whitehouse.gov/sites/default/files/omb/legislative/letters/fy-16-house-fsgg-letter-rogers.pdf>.

¹³ David Moore, *“Washington Highlights, Congress Faces Oct. 1 Budget Deadline”*, Association of American Medical Colleges, September 3, 2015, <https://www.aamc.org/advocacy/washhigh/highlights2015/442200/090315congressfacesoct.1budgetdeadline.html>, viewed 01/12/16