

116TH CONGRESS
1ST SESSION

H. R. 5143

To amend the Federal Election Campaign Act of 1971 to require corporations to disclose to their shareholders the amounts disbursed for certain political activity, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 2019

Mr. CARTWRIGHT (for himself, Mr. SCHIFF, Mr. DEFazio, and Ms. KAPTUR) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on House Administration, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Federal Election Campaign Act of 1971 to require corporations to disclose to their shareholders the amounts disbursed for certain political activity, 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 “Openness in Political
5 Expenditures Now Act” or the “OPEN Act”.

1 **SEC. 2. DISCLOSURE BY CORPORATIONS TO SHARE-**
 2 **HOLDERS OF DISBURSEMENTS FOR POLIT-**
 3 **ICAL ACTIVITY.**

4 (a) DISCLOSURE REQUIRED.—Title III of the Fed-
 5 eral Election Campaign Act of 1971 (52 U.S.C. 30101
 6 et seq.) is amended by adding at the end the following
 7 new section:

8 **“SEC. 325. DISCLOSURES BY CORPORATIONS TO SHARE-**
 9 **HOLDERS OF INFORMATION ON DISBURSE-**
 10 **MENTS FOR CERTAIN POLITICAL ACTIVITY.**

11 “(a) INCLUDING INFORMATION IN REGULAR PERI-
 12 ODIC REPORTS.—

13 “(1) IN GENERAL.—A corporation which sub-
 14 mits regular, periodic reports to its shareholders
 15 shall include in each such report, in a clear and con-
 16 spicuous manner, the information described in para-
 17 graph (2) with respect to the disbursements made by
 18 the corporation for covered political activity during
 19 the period covered by the report, but only if the
 20 amount of the disbursement made for such activity
 21 during the period covered by the report equals or ex-
 22 ceeds the applicable threshold for the activity de-
 23 scribed in paragraph (3).

24 “(2) INFORMATION DESCRIBED.—The informa-
 25 tion described in this paragraph is, for each dis-
 26 bursement for covered political activity—

1 “(A) the date of the disbursement;

2 “(B) the amount of the disbursement;

3 “(C) in the case of a disbursement con-
4 sisting of an independent expenditure or an
5 electioneering communication, or in the case of
6 a covered political activity described in sub-
7 section (c)(3), the name of the candidate identi-
8 fied in the independent expenditure or election-
9 eering communication involved, the Commission
10 ID assigned to the candidate, and the office
11 sought by the candidate; and

12 “(D) in the case of a covered political ac-
13 tivity described in subsection (c)(4), the identi-
14 fication of the association or organization to
15 whom the disbursement was made, and the
16 Commission ID (if any) assigned to the associa-
17 tion or organization.

18 “(3) APPLICABLE THRESHOLD FOR DISCLO-
19 SURE.—For purposes of paragraph (1), the ‘applica-
20 ble threshold’ with respect to a disbursement for
21 covered political activity during a period covered by
22 a report is as follows:

23 “(A) In the case of covered political activ-
24 ity consisting of an independent expenditure,
25 \$250.

1 “(B) In the case of covered political activ-
2 ity consisting of an electioneering communica-
3 tion or a communication described in subsection
4 (c)(3), \$10,000.

5 “(C) In the case of covered political activ-
6 ity consisting of a payment described in sub-
7 section (c)(4), the amount of the limitation on
8 contributions which is in effect under section
9 315(a)(1)(C) as of the last day of the period.

10 “(b) SUBMISSION OF STATEMENT TO COMMISSION.—

11 “(1) SUBMISSION OF STATEMENT.—If a cor-
12 poration includes information in a report pursuant
13 to this section, at the time the corporation submits
14 the report to its shareholders, the corporation shall
15 file a statement with the Commission consisting of
16 the information included in the report pursuant to
17 this section.

18 “(2) HYPERLINK TO INFORMATION.—

19 “(A) REQUIRING POSTING OF
20 HYPERLINK.—If a corporation maintains an
21 internet site, the corporation shall post on such
22 internet site a hyperlink from its homepage to
23 the location on the internet site of the Commis-
24 sion which contains the statement filed by the
25 corporation under paragraph (1).

1 “(B) DEADLINE; DURATION OF POST-
2 ING.—The corporation shall post the hyperlink
3 described in subparagraph (A) not later than
4 24 hours after the Commission posts the state-
5 ment filed by the corporation under paragraph
6 (1) on the internet site of the Commission, and
7 shall ensure that the hyperlink remains on the
8 internet site of the corporation until the expira-
9 tion of the 1-year period which begins on the
10 date of the election with respect to which the
11 disbursements included in the statement are
12 made.

13 “(c) COVERED POLITICAL ACTIVITY DEFINED.—In
14 this section, the term ‘covered political activity’ means
15 each of the following:

16 “(1) An independent expenditure (as defined in
17 section 301(17)).

18 “(2) An electioneering communication (as de-
19 fined in section 304(f)(3)).

20 “(3) A communication which would be treated
21 as an electioneering communication under section
22 304(f)(3) if the communication had been a broad-
23 cast, cable, or satellite communication.

1 “(4) The payment of dues or other amounts to
2 a trade association or to a section 501(c)(4) organi-
3 zation.

4 “(d) OTHER DEFINITIONS.—In this section, the fol-
5 lowing definitions apply:

6 “(1) The term ‘corporation’ means any corpora-
7 tion which is subject to section 316(a).

8 “(2) The term ‘section 501(c)(4) organization’
9 means any organization described in paragraph (4)
10 of section 501(c) of the Internal Revenue Code of
11 1986 and exempt from tax under section 501(a) of
12 such Code.”.

13 (b) EFFECTIVE DATE.—The amendment made by
14 subsection (a) shall apply with respect to reports described
15 in section 325(a)(1) of the Federal Election Campaign Act
16 of 1971 (as added by subsection (a)) which are filed after
17 the expiration of the 90-day period which begins on the
18 date of the enactment of this Act.

19 **SEC. 3. LIMITATION ON ENGAGING IN COVERED POLITICAL**
20 **ACTIVITIES BY SOCIAL WELFARE ORGANIZA-**
21 **TIONS.**

22 (a) IN GENERAL.—Section 501(c)(4) of the Internal
23 Revenue Code of 1986 is amended by adding at the end
24 the following:

“(C)(i) Subparagraph (A) shall not apply to an entity for a taxable year if the total expenditures of such entity for the taxable year for covered political activity exceed the lesser of—

“(I) 10 percent of the total expenditures of such entity for the taxable year, or

“(II) \$10,000,000.

“(ii) Subparagraph (A) shall not apply to an entity for a taxable year unless its governing instrument includes provisions the effects of which are to prohibit the expenditures of the entity for a covered political activity from exceeding the threshold specified in clause (i).

“(iii) For purposes of this subparagraph, the term ‘covered political activity’ means—

“(I) any activity described in paragraphs (1) through (3) of section 325(c) of the Federal Election Campaign Act of 1971, and

“(II) any payment by the entity to any other entity described in this paragraph or to an organization described in paragraph (6) which the payor entity knows, or has reason to know, will be used

1 directly or indirectly by the payee entity or
2 organization for any activity referred to in
3 subclause (I).

4 “(iv) Clause (i) shall not apply for a tax-
5 able year for which the 10 percent threshold
6 specified in clause (i)(I) is exceeded by not
7 more than a de minimis amount if the Sec-
8 retary determines that the reason for exceeding
9 the threshold was not willful and is due to rea-
10 sonable cause.

11 “(v) The Secretary shall prescribe such
12 regulations as may be necessary or appropriate
13 to prevent the avoidance of clause (i), including
14 regulations relating to a direct or indirect
15 transfer of all or part of the assets of an entity
16 to an entity controlled (directly or indirectly) by
17 the same person or persons who control the
18 transferor entity.”.

19 (b) EFFECTIVE DATE.—The amendment made by
20 subsection (a) shall apply to taxable years beginning after
21 the date of the enactment of this Act.

22 **SEC. 4. SEVERABILITY.**

23 If any provision of this Act or amendment made by
24 this Act, or the application of a provision or amendment
25 to any person or circumstance, is held to be unconstitu-

1 tional, the remainder of this Act and amendments made
2 by this Act, and the application of the provisions and
3 amendment to any person or circumstance, shall not be
4 affected by the holding.

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