



**\*\*UPDATED\*\***

March 27, 2013

TO: Members, Senate Committee on Banking

FROM: CalChamber  
 Alliance of Automobile Manufacturers  
 American Insurance Association  
 Associated General Contractors of California  
 Association of California Life and Health Insurance Companies  
 Association of California Insurance Companies  
 Auto Alliance  
 California Apartment Association  
 California Bankers Association  
 California Business Industry Association  
 California Business Roundtable  
 California Grocers Association  
 California Healthcare Institute  
 California Hotel and Lodging Association  
 California Manufacturers and Technology Association  
 California New Car Dealers Association  
 California Restaurant Association  
 California Retailers Association  
 Chambers of Commerce Alliance of Ventura & Santa Barbara Counties  
 Civil Justice Association of California  
 Fullerton Chamber of Commerce  
 Garden Grove Chamber of Commerce  
 Greater Fresno Area Chamber of Commerce

Greater Riverside Chambers of Commerce  
Long Beach Area Chamber of Commerce  
Los Angeles Area Chamber of Commerce  
Orange Chamber of Commerce  
Personal Insurance Federation of California  
Pharmaceutical Research and Manufacturers of America  
Redondo Beach Chamber of Commerce and Visitor's Bureau  
Sacramento Metropolitan Chamber of Commerce  
Santa Clara Chamber of Commerce  
Simi Valley Chamber of Commerce and Visitor Center  
South Bay Association of Chambers of Commerce  
TechNet  
Torrance Area Chamber of Commerce  
United Chambers of Commerce of the San Fernando Valley

**SUBJECT: SB 121 (EVANS): CORPORATIONS: POLITICAL ACTIVITY: SHAREHOLDER  
DISCLOSURE  
SCHEDULED FOR HEARING – APRIL 3, 2013  
OPPOSE**

The organizations identified above are **OPPOSED** to **SB 121**, as introduced January 13, 2013, which would require corporations annually to issue reports on past political expenditures to California shareholders, notify shareholders within 24 hours prior to contributions made during their fiscal year and create a civil cause of action for shareholders against corporations that fail to issue the report and meet the notification requirements.

Forcing certain publicly-held corporations to disclose past political expenditures and shareholder notification 24 hours for current political contributions fails to protect the shareholder's interest of maximizing their return on investment and will likely hurt shareholder's interests. By exposing publicly-held corporations to attacks from competitors and opponents, weakening their ability to defend themselves against such attacks and exposing them to frivolous litigation, **SB 121** will damage the corporations, their income, and the value of their stock, to the detriment of shareholders. Additionally, **SB 121** likely violates the "internal affairs" doctrine, making it unconstitutional.

#### Increased Frivolous Litigation

Providing a civil cause of action for shareholders opens corporations up to frivolous suits. The political arena is volatile and issues often come up without warning. Corporations who fail to meet the 24 hour notification prior to making contributions would be subject to litigation under this bill. Corporations could also be subject to suits for deciding against making those contributions or expenditures or making those contributions or expenditures in amounts that differed from the notification. Additionally, there is the likelihood that out-of-state shareholders will file suits against corporations under California law. Litigation is costly and would only further injure corporations and shareholders.

#### Likely Unconstitutional

**SB 121** is likely a violation of the internal affairs doctrine, a long-standing principle giving the state of incorporation exclusive regulatory authority over the internal affairs of a corporation, including matters such as political contributions and expenditures. In *Edgar v. MITE Corp.* the U.S. Supreme Court reasoned that corporations can only be subject to regulation by one state "because otherwise a corporation could be faced with conflicting demands." California Corporations Code Section 2115 establishes regulatory abilities over some foreign corporations based on significant connections with the state, but expressly limits the state from regulating the internal affairs of companies listed on a public stock exchange. **SB 121** appears to regulate both domestic and foreign publicly-held corporations

regardless of their state of incorporation or connections to the state in contradiction to the provisions of Section 2115, therefore violating the internal affairs doctrine.

#### Disadvantaging Publicly-Held Corporations

**SB 121** will chill the ability of publicly-traded corporations to defend themselves against political attacks by competitors, overzealous regulators, labor unions, or no-growth advocates who are not subject to the same requirements. Requiring publicly-traded corporations to disclose the planned political contributions prior to their contributions, regardless of how far in advance of the contribution, forces them to reveal strategic information which is then available to competitors and opponents. This is similar to requiring a player in a game of poker to show the table their hand. This bill creates an unequal playing field where publicly-held corporations are at a disadvantage to opponents, such as competitors seeking an unfair regulatory advantage, a labor union in the midst of a collective bargaining dispute, or a NIMBY group seeking to derail a project. If publicly traded companies are denied the ability to utilize the same tools in the political arena as their competitors, these companies will suffer to the detriment of shareholders. This bill will therefore have unintended consequences on the very people it claims to protect, shareholders.

#### Shareholder's Interests

The primary concern of most shareholders is to maximize their return on investment. Corporations and companies have similar motivations and are interested in increasing firm value and increasing income. Boards of directors and corporate management have a fiduciary duty to act with those interests in mind, which is enforceable by law. A company's business conduct and financial success are directly affected by state and federal regulations which are part of the political process. In order to protect their interests from harmful regulations, corporations and companies must try to influence the political process in their favor. Both the interests of shareholders and of the corporation focus on increasing the value of the corporation. Publicly-held corporations participating in the political process to ensure they are able to increase their value are protecting the corporation's interests as well as the interests of shareholders.

A study by Professor Roger Coffin of the University of Delaware examined the effects of corporate speech and promises not to engage in corporate speech on returns to determine if engaging in political speech had a negative effect on publicly-held corporations. The study found that corporations engaged in political speech did not experience returns that were statistically significantly lower than market levels. In fact, some corporations experienced returns that were significantly positive. Additionally, the study found that corporations promising not to engage in political speech did not experience returns that exceeded market levels. This study indicates that there is no negative correlation between a corporation's choice to engage in political speech or contributions and the corporation's stock value, and that political speech may even have a positive impact on a corporation's stock value, which in turn benefits shareholders.

Should **SB 121** be enforced against domestic corporations, it would place those corporations at an extreme disadvantage to foreign corporations. This enforcement could have widespread consequences including giving foreign corporations greater influence than domestic corporations over political issues in California and negatively affecting the value of domestic corporations to the detriment of shareholders.

For the reasons stated above, we respectfully **OPPOSE SB 121 (Evans)**. If you have any questions, please contact Jeanne Cain, Executive Vice President, CalChamber at 916.444.6670 or [Jeanne.cain@calchamber.com](mailto:Jeanne.cain@calchamber.com).

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