COMMISSIONER ELLEN L. WEINTRAUB
FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Ellen L. Weintraub
Commissioner, U.S. Federal Election Commission
Comment on File No. S7-23-19

February 3, 2020

Those concerned about the need for shareholders, as shareholders, to have a voice in the governance of the corporations in which they invest have spoken eloquently about the problems raised by the rule proposed by File No. S7-23-19. By raising thresholds for who gets heard by corporate management, these provisions seem clearly aimed at reducing the role of smaller investors.

I write, however, to identify another very serious potential problem with the rule. It ignores the distinction between corporate governance instructions issued by those voting their shares, and political speech U.S. citizens convey through the corporations they are gathered into – both of which are given voice by shareholder proposals. If adopted, the rule will limit U.S. citizen shareholders' rights to express their views to corporate management on the political spending that is supposedly done on those shareholders' behalf, in violation of the principles set forth by the Supreme Court in *Citizens United v. FEC*, 558 U.S. 310 (2010).

In *Citizens United*, the Supreme Court held corporations to be "associations of citizens" and extended to corporations the rights to spend in politics held by those individual U.S. citizens who are their shareholders. Like most Americans, I disagree with much of that opinion. But at the moment, *Citizens United* is the law of the land. And it is no less binding on the Securities and Exchange Commission than it is on the agency where I serve as a commissioner, the Federal Election Commission.

The rule proposed by File No. S7-23-19 operates to restrict the speech of some U.S. citizen shareholders to enhance the relative voice of other U.S. citizen shareholders. This violates another – equally problematic – case that remains the law of the land, *Buckley v. Valeo,* 424 U.S. 1 (1976), where the Supreme Court held: "[T]he concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed to secure the widest possible dissemination of information from diverse and antagonistic sources, and to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people" (at 48-49, *internal quotations and citations omitted).*

If corporations are to express the political views of their shareholders, S.E.C. rules must allow all U.S. citizen shareholders an equal ability to convey their political views to corporate management. "[P]olitical speech cannot be limited based on a speaker's wealth." *Citizens United,* 558 U.S. at 905. The *Citizens United* majority wrote that in matters of political speech, the rights of dissenting shareholders would be protected "through the procedures of corporate democracy." *Id.* at 911. The S.E.C. should not adopt rules that undermine or eliminate those protections.

In order to express the political views held by its U.S. citizen shareholders, a corporation must know what those views are. No corporate association of U.S. citizens can claim to speak politically on behalf of its U.S. citizen shareholders when it has been allowed to silence some of those U.S. citizens and enhanced the voices of others. *Citizens United* purports to protect the political voices of citizen shareholders. The S.E.C.'s proposed rule permits the silencing of many of those voices and distorts the political activity of corporations.

The S.E.C. must not create a situation in which the Supreme Court – and the Constitution – say that all citizens are equal, but the S.E.C. says that some citizens are more equal than others.

For these reasons, I oppose the rule proposed by File No. S7-23-19.