

May 17, 2011

The President
The White House
Washington, DC 20500

Dear Mr. President:

As leaders of the nation's business groups and trade associations representing virtually the entire range of American private enterprise, including thousands of small and medium-sized businesses, we urge you not to sign an executive order that would require companies to disclose their political spending—and that of their officers and directors—as a condition for bidding for federal contracts.

We have reviewed the publicly available draft of the proposed order. It suffers from severe legal and policy defects and would, if signed, immediately damage the federal contracting process.

The executive order would make every company that tries to contract with the federal government disclose spending that is confidential and used to fund core, First Amendment-protected political speech. Also troubling is the executive order's reach beyond companies to their individual officers and directors, who would be forced by the executive order to disclose personal political spending undertaken with their own assets. This aspect of the order will both impair individuals' First Amendment freedoms and interfere with the relationships between companies and their employees.

The political spending covered by the draft executive order is protected by the First Amendment and may not be interfered with absent an important governmental interest. It is quite clear, however, that despite perfunctory language to the contrary, the draft executive order is not motivated by a desire to improve the federal procurement system or any other potentially legitimate governmental interest. Indeed, the federal procurement system already has several built-in safeguards that work quite well to ensure that contract awards are based on the merits of the bid proposal.

Rather than strengthening these existing safeguards, the draft executive order would politicize the procurement process. The proposed order will either encourage covered speakers to refrain from exercising their constitutional speech rights so as to avoid jeopardizing their competitiveness for federal contracts, or it will encourage speakers to alter their political messages in ways perceived to increase their chances of being awarded federal contracts. Either effect is a problem under the First Amendment.

The draft executive order also would unfairly disadvantage only a specific category of speakers: companies and the organizations that represent them. The order would limit the ability of businesses, including small, disadvantaged, women, veteran, disabled, and minority-owned

businesses—the targets of a substantial portion of the hundreds of billions of annual federal contract dollars—to participate fully in the political process, while allowing unions and grant- and aid-seeking organizations to engage in political speech without additional restrictions. Laws that draw these types of unreasoned distinctions between categories of speakers are not just lopsided and discriminatory—they are arbitrary and cannot withstand legal scrutiny.

Furthermore, the draft order would destroy the carefully calibrated balance of campaign finance regulation established by Congress. Political speech lies at the core of the First Amendment and decisions regarding its regulation must be carefully measured against the extent to which such regulations will impair First Amendment rights. Congress has already performed that task by enacting the Federal Election Campaign Act in 1971 and amending it and declining to amend it several times since. By unilaterally implementing disclosure obligations that are not imposed by FECA—indeed, by imposing disclosure obligations that Congress has affirmatively rejected in the failed DISCLOSE Act—the draft executive order impermissibly overrides the clearly expressed will of Congress.

The harms outlined above would begin the moment you sign the draft executive order. Even though the order purports to apply only to contracts solicited after the Federal Acquisition Regulatory Council promulgates final implementing regulations at the end of 2011, the order requires the disclosure of all covered spending for the two years preceding a bid for a contract. As a result, every bid attempt and political spending decision made after you sign this order will be undertaken in its shadow.

The Executive has a statutory obligation to procure goods and services based on the best value for the American taxpayer. It also has constitutional obligations to respect the legislative domain of Congress, to refrain from chilling protected political speech, and to avoid subjecting citizens to arbitrary laws. The draft executive order violates each of these duties and *potentially turns the procurement process into a tool with which to reward political allies and punish political opponents. Accordingly, we urge you to abandon this dangerous and ill-advised proposal.* American businesspeople should not be forced to limit the exercise of their constitutional rights under a new and oppressive regulatory scheme.

Sincerely

60 Plus Association

Aeronautical Repair Station Association

Agricultural Retailers Association

American Apparel & Footwear Association (AAFA)

American Bakers Association

American Chemistry Council

American Council of Engineering Companies

American Hotel & Lodging Association

American Lighting Association

American Moving & Storage Association
American Petroleum Institute
American Rental Association
Arizona - New Mexico Cable Communications Association
Arizona Chamber of Commerce and Industry
Associated Builders & Contractors, Inc.
Associated Builders and Contractors, Rocky Mountain Chapter
Associated Builders and Contractors of Western Washington
Associated Equipment Distributors
Associated General Contractors
Associated Industries of Massachusetts
Associated Oregon Industries
Associated Wire Rope Fabricators
Association of Washington Business
Bismarck Mandan Chamber
Brawley Chamber of Commerce
Brea Chamber of Commerce
Buffalo Niagara Partnership
Business Coalition for Fair Competition
Business Council of Alabama
Construction Industry Round Table
Edison Electric Institute
El Centro Chamber of Commerce & Visitors Bureau
Far West Equipment Dealers Association
Federation of American Hospitals
Florida Chamber of Commerce
Freemont Area Chamber of Commerce
Georgia Mining Association
Greater Effingham Chamber of Commerce & Industry
Greater Raleigh Chamber of Commerce
Greater Springfield Chamber of Commerce
Heating, Airconditioning & Refrigeration Distributors International (HARDI)
Huron County Chamber of Commerce

Independent Electrical Contractors, Inc.
International Dairy Foods Association
International Foodservice Distributors Association
ISSA – The Worldwide Cleaning Industry Association
Johnson City/Washington County/Jonesborough Chamber of Commerce
Little Rock Regional Chamber of Commerce
Los Angeles Area Chamber of Commerce
Marine Retailers Association of America
Maryland Chamber of Commerce
Metals Service Center Institute
Montana Chamber of Commerce
Montgomery Area Chamber of Commerce
National Association of Chemical Distributors
National Association of Home Builders
National Association of Manufacturers
National Association of Wholesaler-Distributors
National Council of Chain Restaurants
National Federation of Independent Business
National Poultry & Food Distributors Association
National Ready Mixed Concrete Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Stone, Sand & Gravel Association
North American Equipment Dealers Association
North American Export Grain Association
North Carolina Chamber
Oshkosh Chamber of Commerce
Pennsylvania Chamber of Business and Industry
PhRMA
Reno Sparks Chamber of Commerce
Salisbury Area Chamber of Commerce
Schuylkill Chamber of Commerce

Small Business Entrepreneurship Council
SouthEastern Equipment Dealers Association
Tempe Chamber of Commerce
Tennessee Chamber of Commerce & Industry
Texas Association of Business
The Kansas Chamber
The Otsego County Chamber
Toledo Regional Chamber of Commerce
Tri-City Regional Chamber of Commerce
Tulsa Metro Chamber
U.S. Chamber of Commerce
Warren County Regional Chamber of Commerce
West Virginia Chamber of Commerce