

STATE OF NORTH CAROLINA, DEPARTMENT OF THE SECRETARY OF STATE,

Raleigh, NC, November 3, 2011.

Re H.R. 2930—“Entrepreneur Access to Capital Act of 2011”

Hon. MELVIN WATT,
Rayburn HOB,
Washington, DC.

DEAR REPRESENTATIVE WATT: I am writing to express my concern with H.R. 2930, the Entrepreneur Access to Capital Act, which could be voted on by the House this week. This legislation, intended to promote an internet-based fundraising technique known as “crowd-funding” as a tool for investment, will preempt state investor protection laws and weaken important investor protections.

Crowdfunding is an online money-raising strategy that began as a way for the public to donate small amounts of money, often through social networking websites, to help artists, musicians, filmmakers and other creative people finance their projects. The concept has recently been suggested as a way of assisting small businesses and start-ups looking for investment capital to get their business ventures off the ground.

Soliciting charitable donations from strangers online to advance a goal or cause is one thing. Selling shares in a business online to strangers who expect to realize a potential return on their investment is something very different.

H.R. 2930 contains a preemption provision that would prohibit my agency from requiring the filing or disclosure of information about these investment opportunities before they are offered to the public in my state. I believe enacting this preemption would be a serious mistake because, based on our previous experience, many of the crowdfunding opportunities will be targeted at Mom and Pop retail investors. The authority to require filings is critical to my office’s ability to “get under the hood” of an offering to make sure that it really is what it says it is.

I appreciate efforts by Congressman Ed Perlmutter (D-CO) to work with the bill’s sponsor to produce a bipartisan amendment that would alleviate the states’ concern with the preemptive provisions of H.R. 2930. Unfortunately, the Perlmutter-McHenry Amendment made in order by the Rules Committee on November 2 does not achieve this goal. Indeed, by simply clarifying that states “retain jurisdiction . . . to investigate and bring enforcement actions with respect to fraud or deceit,” the amendment essentially restates the preemptive provisions as they existed in the original bill.

H.R. 2930 may be well intended, but I am concerned that it could create serious enforcement challenges and potentially open the door to the possibility of significant increases in investment fraud. Small businesses are vital to job growth and to improving the economy in our state, but by displacing significant safeguards currently provided by the crucial role of state securities regulators, Congress could enact policies intended to strengthen the economy that have precisely the opposite effect.

As North Carolina’s top investor protection official, I urge you not to support H.R. 2930 in its current form. I understand the North American Securities Administrators Association (NASAA), of which I am a member, is already hard at work on a state level model rule on crowdfunding that would preserve a state’s ability to prevent scam artists from using crowdfunding offerings as the latest method for ripping off Main Street investors. I urge you to remove the state preemption section from the bill.

Thank you for your attention to this important matter. Please don’t hesitate to con-

tact me if I may be of any assistance, or if you or your staff have questions regarding the legislation in question.

Sincerely,

ELAINE F. MARSHALL.

Mr. PERLMUTTER. Madam Chair, how much time remains?

The Acting CHAIR. The gentleman from Colorado has 2 minutes remaining. The gentleman from North Carolina has 2 minutes remaining.

Mr. MCHENRY. Will my colleague yield?

Mr. PERLMUTTER. I yield to my other friend from North Carolina.

Mr. MCHENRY. I thank my colleague Mr. PERLMUTTER for working diligently with us on this language. He raised significant concerns. The language that we have that the gentleman was integral in crafting actually is perhaps part of the reason why the President supports the legislation. And I appreciate Mr. PERLMUTTER’s working diligently on this.

I want to remind my colleagues that in our legislative hearing on this bill, the Democrat witness before the committee said that crowdfunding will not work but for this exemption from individual State registration. It is a very key part of this process. When it costs \$150 to register a security in Connecticut, and all you’re trying to do is raise \$150 from Connecticut, you net zero. And beyond that, asking a lawyer to file the paperwork. What we want to do is preserve that anti-fraud bit that the States do very well at, and we have done that with this language.

I thank my colleague for yielding.

Mr. PERLMUTTER. I reserve the balance of my time.

Mr. WATT. Madam Chair, I yield myself the balance of my time, although I won’t take it.

I want to express my thanks also to Mr. PERLMUTTER, and to my colleague from North Carolina (Mr. MCHENRY). As I indicated, they made an effort to move this in the right direction. They, in fact, moved it. This amendment is better than the underlying bill, which totally preempted State law. So it moves in the right direction, it just does not move far enough in the right direction. Because of that—I mean, I’m not going to vote against the amendment. I’m not even going to ask for a recorded vote on the amendment itself. But it will make it necessary for me to oppose the bill itself. And I thought it was important enough for me to come down and express this because there are a significant number of people out there, including a number of State Attorneys General and/or Secretaries of State who believe this does not go far enough.

With that, I yield back the balance of my time.

Mr. PERLMUTTER. In closing, Madam Chair, I appreciate Mr. WATT’s comments. They’re legitimate, except that the purpose of this is to have in effect a national solicitation notification nationally to the SEC, and then the powers of the States kick in, as op-

posed to individual notification State by State. And I appreciate his concern—it’s legitimate, but to make this work, you have to have a structure that allows for the national offering, notice to the States, and then the States’ police powers kick in. And the SEC has its police powers as well if there is any fraud, manipulation, misrepresentation, or the like.

With that, I would urge adoption of the amendment.

I yield back the balance of my time.

The Acting CHAIR. The question is on the amendment offered by the gentleman from Colorado (Mr. PERLMUTTER).

The amendment was agreed to.

The Acting CHAIR. The Committee will rise informally.

The Speaker pro tempore (Mr. MCHENRY) assumed the chair.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate as passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 2112. An act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 2112) “An Act making appropriations for Agriculture, Rural Development, Food and Drug Administration, and Related Agencies programs for the fiscal year ending September 30, 2012, and for other purposes,” agree to a conference with the House of Representatives on the disagreeing votes of the two Houses thereon, and appoints Mr. KOHL, Mr. HARKIN, Mrs. FEINSTEIN, Mr. JOHNSON (SD), Mr. NELSON (NE), Mr. PRYOR, Mr. BROWN (OH), Mr. INOUE, Mrs. MURRAY, Ms. MIKULSKI, Mr. BLUNT, Mr. COCHRAN, Mr. MCCONNELL, Ms. COLLINS, Mr. MORAN, Mr. HOEVEN, Mrs. HUTCHISON, and Mr. SHELBY, to be the conferees on the part of the Senate.

The SPEAKER pro tempore. The Committee will resume its sitting.

ENTREPRENEUR ACCESS TO CAPITAL ACT

The Committee resumed its sitting.

AMENDMENT NO. 4 OFFERED BY MS. VELÁZQUEZ

The Acting CHAIR. Pursuant to clause 6 of rule XVIII, the unfinished business is the demand for a recorded vote on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ) on which further proceedings were postponed and on which the noes prevailed by voice vote.

The Clerk will redesignate the amendment.

The Clerk redesignated the amendment.

RECORDED VOTE

The Acting CHAIR. A recorded vote has been demanded.