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Opening Statement Rep. Elijah E. Cummings, Ranking Member

Hearing on "Politicizing Procurement: Will President Obama's Proposal Curb Free Speech and Hurt Small Business?"

May 12, 2011

The Committee on Oversight and Government Reform is supposed to enhance transparency and shine light on waste, fraud, and abuse. I have been a member of this Committee for 15 years, and I never thought I would see the day when our Committee would view transparency as the enemy.

The draft executive order being developed by the Administration would require federal contractors to disclose more information about their political contributions than they currently provide, particularly those given to third party entities. Chairman Issa said this week that he opposes this effort because additional information could be used nefariously to create a "Nixonian type enemies list." In other words, companies should not disclose more information because people in power could misuse that information to retaliate against them.

I have a fundamental problem with this premise. Under this logic, all campaign disclosures would be bad, not just new ones. Government contractors already disclose contributions and expenditures by their PACs and those who contribute to them. Contributions by the officers and directors of government contractors are also required to be disclosed. Should we eliminate those provisions too? Of course not.

A second argument made by opponents is that contracting officers might review political contributions in order to reward allies or punish foes by awarding or withholding government contracts. Again, this could happen now under current disclosure rules, but federal procurement law prohibits it. The draft executive order also reiterates that "every stage of the contracting process" must be "free from the undue influence of factors extraneous to the underlying merits of contracting decision making, such as political activity or political favoritism."

A third argument—that the draft executive order violates the First Amendment—is also misplaced. Even in the recent *Citizens United* case, eight of nine justices agreed that campaign disclosure rules are consistent with the First Amendment because they do not prohibit contributions and "do not prevent anyone from speaking."

For all of these reasons, a broad coalition of dozens of open government and other organizations strongly supports the Administration's draft executive order. More than 30 groups, including nonpartisan, nonprofit organizations like Democracy 21, the Project on Government Oversight, Public Citizen, and many others, have concluded that the draft executive order would enhance transparency and decrease corruption.

Unfortunately, we will not be hearing from these groups today because Chairman Issa refused my request to invite Fred Wertheimer, the President of Democracy 21, to testify on behalf of this coalition. Although I was encouraged when Chairman Graves agreed to the request from his ranking member, Representative Velazquez, to invite a small business owner to today's joint hearing, Chairman Issa chose not to follow his example.

These are not the only groups that support the draft executive order. On Tuesday, a coalition of institutional investors and investor coalitions collectively managing more than \$130 billion also wrote to express their support. In their letter, they explained that "Corporate political activity presents significant risks to shareholder value," and "transparency allows investors to put together a more complete picture of the various risks to our investments."

For these reasons, I ask unanimous consent to place the following documents into the official record for today's hearing:

- First, I would like to submit the testimony that Mr. Wertheimer prepared for today's hearing, but was not allowed to deliver.
- Second, I would like to submit a letter written on May 4 by more than 30 open government organizations and others expressing their "strong support" for the executive order and its transparency goals.
- Third, I would like to submit a letter written on May 10 from the coalition of institutional investors who support the draft executive order to protect the interests of corporate shareholders.

Thank you, Mr. Chairman.

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