

January 31, 2017

ActionAid International USA
Amnesty International
American Jewish World Service
Bank Information Center
CARE USA
Catholic Relief Services
Columban Center for Advocacy and Outreach
CorpWatch
Crude Accountability
EarthRights International
EARTHWORKS
Environmental Defense Fund
EG Justice
Environmental Defense
Friends of the Earth
Gender Action
Global Financial Integrity
Global Rights
Global Witness
Government Accountability Project
Human Rights Watch
International Budget Project
International Labor Rights Forum
Justice in Nigeria Now
Micah Challenge USA
Natural Resource Governance Institute
Open Society Policy Center
Oxfam America
Pacific Environment
Presbyterian Church USA
Project on Government Oversight
Robert F. Kennedy Center for Human Rights
Sierra Club
Sustainable Energy & Economy Network
United Methodist General Board of Church and Society
United Steelworkers
United to End Genocide

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing & Urban Affairs
United States Senate
Washington, DC 20510

Re: S.J. Resolution 9 and the Cardin-Lugar Anti-Corruption Provision

Dear Majority Leader McConnell, Minority Leader Schumer, Chairman Crapo and Ranking Member Brown:

I am writing on behalf of the Publish What You Pay – United States (PWYP-US) coalition, and supporting organizations, to share our position on the vital importance of the natural resource extraction anti-corruption rule (Cardin-Lugar Rule), being considered before the Senate. The Securities and Exchange Commission (SEC) rule¹ implements the requirements outlined in the Cardin-Lugar Provision (or Section 1504) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.²

The bipartisan Cardin-Lugar Anti-Corruption Rule requires oil, gas, and mining companies listed on U.S. stock exchanges to publicly disclose the payments made to U.S. and foreign governments in exchange for oil, gas and minerals. Transparency of oil, gas, and mining revenues enables citizens in resource-rich countries to hold their governments to account, deters corruption, benefits businesses and investors, promotes effectiveness of U.S. foreign aid, and is critical to U.S. energy security and national security interests.

The SEC rule was a product of an open and robust rulemaking that fully considered the perspectives of a multitude of stakeholders,

¹ Securities and Exchange Commission. 17 CFR Parts 240 and 249b, Disclosure of Payments by Resource Extraction Issuers; Final Rule. Available at: <https://www.gpo.gov/fdsys/pkg/FR-2016-07-27/pdf/2016-15676.pdf>

² Read the text of Section 1504 here: <http://pwypus.wpengine.com/wp-content/uploads/2016/05/1504-Law-Text.pdf>

including the views of oil, gas, and mining companies. The SEC received 519 comment letters from companies, investors, economists, academic experts, national security experts, U.S. government officials, members of Congress, and civil society actors from around the world – the overwhelming majority of whom supported a strong transparency rule. The SEC also received two petitions with more than 260,000 signatures from Americans concerned about corruption.³ The Cardin-Lugar Rule cannot be considered a ‘midnight regulation’, nor does it represent agency overreach. The law has a long legislative history, including as bipartisan standalone bills in the House and Senate.⁴

The Cardin-Lugar Rule is a financial reporting requirement; it is not an onerous regulation that in any way limits the operations of oil, gas, and mining companies. The rule simply requires companies to publicly report payments that companies track in the normal course of doing business. After reviewing the substantial evidence in the administrative record, the SEC found that disclosures do not contain commercially sensitive information that would cause competitive harm. A competitor cannot use payment data to “reverse engineer” a company’s return on investment or the contract terms of a specific project.⁵ Complex factors such as access to technology and finance determine a company’s success in winning bids with host governments – not transparency of payments. Extractive companies that are covered by payment disclosure requirements in other jurisdictions have continued to win bids.⁶

The Cardin-Lugar Rule helps break the damaging cycle of corruption and revenue mismanagement that has crippled resource-rich but economically poor countries. With access to information about the extractive payments that governments receive, citizens can ensure that natural resource revenues are used for the benefit of all, rather than spirited away to benefit political elites.

Corruption is more than just a threat to economic growth and the protection of human rights; it threatens U.S. national security by fueling and funding terrorism and driving conflict globally. Payment transparency helps prevent corruption, secrecy and government abuse that has catalyzed conflict, instability and the growth of violent extremism. The terrorist groups currently posing the gravest threats to the U.S. and its allies have taken root in highly fragile countries with inadequate service delivery and responsiveness to citizens. Local populations frustrated with government failures and with no meaningful opportunities to improve their lives or provide for their families may tolerate, if not actively support, extremist groups that challenge the government or even do the government’s job for it by providing basic services.⁷ Information

³ See the full record of comments submitted to the SEC: <https://www.sec.gov/comments/s7-25-15/s72515.shtml>

⁴ Read the legislative history of Section 1504 here: http://www.pwypusa.org/sites/default/files/Legislative%20History%20Timeline_1504.pdf; Committee on Foreign Relations of the United States Senate. The Petroleum and Poverty Paradox: Assessing U.S. and International Community Efforts to Fight the Resource Curse (Oct. 2008), p. 2. Available at: <http://www.gpo.gov/fdsys/pkg/CPRT-110SPRT44727/pdf/CPRT-110SPRT44727.pdf>

⁵ Comment submitted to the SEC by Robert F. Conrad (July 17, 2015). Available at: <http://www.sec.gov/comments/df-titlexv/resource-extraction-issuers/resourceextractionissuers-81.pdf>

⁶ Comment submitted to the SEC by PWYP-US (Mar. 14, 2014), pp.35-37. Available at: <http://www.sec.gov/comments/df-titlexv/resource-extraction-issuers/resourceextractionissuers-28.pdf>;

⁷ Sarah Sewall. “This is one of our top strategies for fighting terrorism.” CNBC. (Dec. 2016). Available at: <http://www.cnbc.com/2016/12/15/this-is-one-of-our-top-strategies-for-fighting-terrorism-state-department-official-commentary.html>;

made available through the Cardin-Lugar Rule empowers citizens to hold their governments accountable for meeting their needs and building a better future, thus helping deny violent extremist groups a key recruiting tool: people's frustration and hopelessness.

Corrupt regimes that prevent accountability from their citizens by blocking transparency must be considered unreliable sources of oil for the U.S. over the long term. Venezuela, Iraq, and Angola are among the top 15 countries from which the U.S. imports oil. These three countries are among the top 10 most corrupt countries according to Transparency International.⁸ Energy security is better protected when the U.S. can help promote a stable operating environment and a long-term, mutually beneficial relationship with oil producing countries.

Revenues from the natural resource sector in Africa dwarf international aid to resource-rich, but economically poor, countries throughout the continent. In 2011, oil revenues from Nigeria alone were 60 percent higher than total international aid to all sub-Saharan African countries.⁹ With greater accountability, resource-rich countries can graduate from reliance on U.S. development and military assistance by better managing their country's own wealth to take on insecurity and poverty.

The Cardin-Lugar Rule provides important benefits to both investors and companies. Investors representing nearly \$10 trillion in assets under management wrote to the SEC in support of the Cardin-Lugar Rule.¹⁰ They highlighted the importance of accessing the information made available through the Cardin-Lugar Rule to better assess and analyze risk in their investments.¹¹ Investors understand the importance of a stable and predictable operating environment for the oil, gas, and mining companies that they invest in. Recent research suggests that the increased transparency resulting from disclosures required by the Cardin-Lugar Rule could lower the cost of capital for covered companies by \$6.3 billion to \$12.6 billion.¹²

Through public disclosure of project-level payments, companies can demonstrate their economic contributions to countries and local communities. This improves company-community relations, and can ultimately save a company millions of dollars in losses from production stoppages caused by community protests. In countries with endemic corruption, companies can be pressured to act immorally or illegally. When news of malfeasance becomes public, it not only damages the reputation of the companies but their home countries as well. Transparency

Sarah Sewall, Under Secretary of State for Civilian Security, Democracy, and Human Rights. United States Department of State. "Partners in Prevention: Addressing Threats to Civilian Security" (Jan. 2015). Available at: <https://www.state.gov/j/remarks/236130.htm>

⁸ Transparency International. Corruption Perceptions Index 2015. Available at: <https://www.transparency.org/cpi2015/>; U.S. Energy Information Administration. Total imports of petroleum (Sept. 2016). Available at: <http://www.eia.gov/petroleum/imports/companylevel/>

⁹ Natural Resource Governance Institute. The 2013 Resource Governance Index (2013), p.3. Available at: http://www.resourcegovernance.org/sites/default/files/rgi_2013_Eng.pdf

¹⁰ See Comment submitted to the SEC by Calvert Investments (16 Feb. 2016). Available at: <https://www.sec.gov/comments/s7-25-15/s72515-39.pdf>

¹¹ Stu Dalheim. "Transparency from Energy Companies is Good for Investors, and Good for Business." Morning Consult. (July 2016) Available at: <https://morningconsult.com/opinions/transparency-oil-gas-mining-companies-good-investors-good-business/>

¹² Comment submitted to the SEC by Anthony Cannizzaro and Robert Weiner. Does Dodd-Frank Disclosure Regulation Benefit Investors? Theory, Landscape, and Application to Extractive Industries (Feb. 2016). Available at: <https://www.sec.gov/comments/s7-25-15/s72515-22.pdf>

of payments will deter companies from making illicit transactions, and provide them with a credible reason for denying the demands of host-country governments to do so.

Other countries followed U.S. leadership on transparency, and today 30 countries have adopted their own rules that cover the vast majority of oil, gas and mining companies that compete with American firms.¹³ Major companies including BP, Shell, and BHP Billiton are entering their second year of reporting under the EU rules without any competitive harm. Russia's state-owned extractive companies, Gazprom and Rosneft are also entering their second year of reporting their payments publicly as they are listed on the London Stock Exchange and covered by the UK rules.¹⁴ Under the Cardin-Lugar Rule more state-owned companies, including China's CNPC, Petrochina and Sinopec and Brazil's Petrobras, would be required to report their payments. Removing the Cardin-Lugar Rule would allow those companies to continue to operate without reporting. It would also raise compliance costs for cross-listed companies that would have to prepare multiple reports.

The Cardin-Lugar Anti-Corruption rule was the product of a Congressional mandate, a long legislative history, a robust SEC rulemaking and has the support of stakeholders all over the world. The U.S. should not weaken its position as a leader in combatting corruption, nor turn its back on the commitments it has made to our partners in Canada and Europe.

For all of these reasons we urge you to support the Cardin-Lugar Anti-Corruption rule and vote no on S.J. Resolution 9.¹⁵

Thank you for your consideration and do not hesitate to contact me with any questions. I can be reached at jmorgan@pwypusa.org and 202-496-1189.

Sincerely,



Jana Morgan
Director
Publish What You Pay - United States

¹³ PWYP-US. Transparency on the Move: Payment Disclosure by the World's Largest Oil, Gas & Mining Companies (Feb. 2015) Available at: http://pwypus.wpengine.com/wp-content/uploads/2016/05/Company-Coverage-Fact-Sheet_Final_0-1.pdf

¹⁴ Gazprom Consolidated Report on Payments to Governments for the Year 2015. Available at: <http://www.gazprom.com/t/posts/12/001311/gazprom-consolidated-report-2015-en.pdf>; Rosneft Oil Company Report on payments to governments for the year ended December 31, 2015. Available at: https://www.rosneft.com/upload/site2/document_file/Rosneft_GP_2015_ENG_30.06_final.pdf; PJSC LUKOIL Report on Payments to Governments for the year 2015. Available at: <http://www.lukoil.com/InvestorAndShareholderCenter/ReportsAndPresentations/reportonpaymentstogovernments>

¹⁵ H.J.Res.41 - Providing for congressional disapproval under chapter 8 of title 5, United States Code, of a rule submitted by the Securities and Exchange Commission relating to "Disclosure of Payments by Resource Extraction Issuers". Available at: <https://www.congress.gov/bill/115th-congress/house-joint-resolution/41?q=%7B%22search%22%3A%5B%22resource+extraction%22%5D%7D&r=1>

Publish What You Pay - United States Coalition Members

Action Aid USA
American Jewish World Service
Amnesty International USA
Bank Information Center
CARE USA
Catholic Relief Services
Columban Center for Advocacy and Outreach
CorpWatch
Crude Accountability
EarthRights International
Earthworks
EG Justice
EIRIS Conflict Risk Network
Environmental Defense Fund
Friends of the Earth
Gender Action
Global Financial Integrity
Global Rights
Global Witness
Government Accountability Project
Human Rights Watch
International Budget Project
International Labor Rights Forum
Justice in Nigeria Now
Maryknoll Office for Global Concerns
Micah Challenge USA
Natural Resource Governance Institute
Open Society Policy Center
Oxfam America
Pacific Environment
Presbyterian Church USA
Project on Government Oversight
Robert F. Kennedy Center for Human Rights
Sierra Club
Sustainable Energy & Economy Network
The Borgen Project
United Methodist General Board of Church and Society
United Steelworkers
United to End Genocide

Supporting Organizations

Clean Water Action
Consumers for Auto Reliability and Safety
Domini Impact Investments LLC

FACT Coalition
Fair Share
Food & Water Watch
Institute for Agriculture and Trade Policy
Institute for Science and Human Values
International Senior Lawyers Project
Livelihoods Knowledge Exchange Network
Natural Resources Defense Council
Oceana
Progressive Congress Action Fund
Transparency International-USA
United States Public Interest Research Group
Wild Virginia