



October 25, 2019

The Honorable Nancy Pelosi  
Speaker  
US House of Representatives  
H-323, The Capitol  
Washington, DC 20515

The Honorable Kevin McCarthy  
Minority Leader  
H-204, The Capitol  
US House of Representatives  
Washington, DC 20515

Dear Speaker Pelosi and Minority Leader McCarthy:

**I write in strong opposition to H.R. 4344, a bill to amend the Securities Exchange Act of 1934 to allow the Securities and Exchange Commission to seek and Federal courts to grant disgorgement of unjust enrichment, and for other purposes.** This legislation would do little to protect investors and instead would expand the SEC's authority. H.R. 4344 would create uncertainty within the marketplace as investors would begin operating under the assumption that future statutes of limitations established by legal precedent are movable and can be changed on a political whim. Should this legislation become law, those saving for retirement will be expected to pick up the tab for the additional regulatory burdens placed on businesses.

In 2017, the Supreme Court agreed to hear *Kokesh v. SEC*, in which the question before the Court was whether the SEC has the authority to seek the repayment of funds through disgorgement after a five-year statute of limitations has expired. The Supreme Court unanimously held that "Disgorgement, as it applied in SEC enforcement proceedings, operates as a penalty under Section 2462. Accordingly, any claim for disgorgement is an SEC enforcement action must be commenced within five years of the date the claim accrued."<sup>1</sup>

Under current law, the SEC is required to bring disgorgement claims within 5 years of an alleged violation. This promotes effective deterrence and provides the SEC with more than enough time to discover violations of securities laws and file complaints in a timely manner. Anything longer would undermine the due process rights of defendants and hamper their ability to address the claims.

**If H.R. 4344 were to be enacted, Congress will have effectively overturned a unanimous decision by the Supreme Court.** Additionally, this bill will expand the SEC's authority to target businesses with little deference toward due process that allows pending complaints to remain dormant for over a decade.

For these reasons, **I oppose H.R. 4344** and encourage Representatives to vote against this legislation as it would restrict the due process rights of businesses and investors. I worry H.R. 4344 provides a gateway for future legislation that moves the goal posts of due process and provides even greater power to government regulators over legally operating businesses. This would be a slippery slope for the rule of law.

Sincerely,

Grover G. Norquist  
President, Americans for Tax Reform

<sup>1</sup> Justice Sotomayor, Sonia, *Kokesh v. Sec. & Exch. Comm'n*, Supreme Court of the United States, 137 S. Ct. 1635 (2017), June 5, 2017, <https://casetext.com/case/kokesh-v-sec-exch-commn?ref=Sb12DywnR>

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