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January 31, 2017

The Honorable Paul D. Ryan
Speaker
U.S. House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
U.S. House of Representatives
H-204, The Capitol
Washington, DC 20515

Dear Speaker Ryan and Democratic Leader Pelosi:

The American Petroleum Institute (API) strongly supports H.J.Res. 41, providing for congressional disapproval under the Congressional Review Act (CRA) of the Securities and Exchange Commission (SEC) rule relating to “Disclosure of Payments by Resource Extraction Issuers” (Section 1504 rule). API strongly supports transparency. Unfortunately, the Section 1504 rule fails to strike the right balance between its intended disclosure requirement purposes and protecting the competitiveness of U.S.-publicly listed companies, hurting American workers and investors.

The U.S. oil and natural gas industry has a long history of supporting transparency efforts in the countries where we operate. We have sought to work with local governments and populations to address concerns that may arise with our operations. Toward that end, we have found that direct engagement between the host country governments, our companies, and the local populations can help curtail the misuse of government resources that could otherwise stymie economic growth and development. Further the Foreign Corrupt Practices Act expressly prohibits illicit payments by U.S. companies operating abroad. Finally, by working through programs such as the Extractive Industries Transparency Initiative, which provides mechanisms for independent verification of the reported payments with the host government receipts, the industry can continue to be productive in this area.

In 2010, Congress included Section 1504 in the Dodd-Frank Act although the provision had no relation to the housing and financial crisis that the underlying legislation was intended to remedy. Specifically, Section 1504 requires companies registered with the SEC to report, on an annual basis, payments made to a foreign government or the U.S. federal government relating to the commercial development of oil, natural gas, and minerals. As a result, the SEC was asked to regulate on a social agenda issue with little legislative direction in the context of its broader function to police for fraud and protect investors.

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The industry attempted to work in good faith with the SEC on a rule to balance the intent of the statute with the other constraints of the securities laws focusing on capital development and shareholder protection. The SEC's first attempt at a rule failed to achieve that balance and was vacated by a court for "substantial errors." The industry again sought to work with the SEC and offered a model that could generate meaningful payment reporting without putting U.S.-publicly listed energy producers at a competitive disadvantage to state-owned competitors around the world and endangering the safety of American employees working abroad. Instead of engaging with us, the SEC finalized a new rule essentially following the previously vacated rule and requiring reporting methods that further confuses the transparency objective.

The CRA was established for rules such as this. Congress has the ability to review and reset the regulatory process when various agencies are not able to develop balanced rules. By passing the resolution to disapprove the Section 1504 rule, Congress can reclaim its authority, and in the process, protect American companies, workers, and investors. API strongly urges the U.S. House of Representatives to approve H.J.Res. 41.

Sincerely,

A handwritten signature in black ink, appearing to read "Jack Gerard", with a long horizontal flourish extending to the right.

Jack N. Gerard
President and CEO

Cc: Members of the U.S. House of Representatives