

**COMMITTEE OF CONCERNED SHAREHOLDERS**  
10732 Farragut Drive  
Culver City, CA 90230  
<http://www.ConcernedShareholders.com>  
[Information@ConcernedShareholders.com](mailto:Information@ConcernedShareholders.com)

VIA EMAIL

April 26, 2004

Mr. Jonathan G. Katz  
Secretary  
Securities and Exchange Commission  
450 Fifth Street, NW  
Washington, DC 20549-0609

**Re: Petition for Rulemaking Concerning Shareholder Communications  
SEC File No. 4-493**

Dear Mr. Katz:

This letter comments upon the Petition for Rulemaking Concerning Shareholder Communications submitted by the Business Roundtable (“BRT”). The BRT totally ignored the issue of communications by and between Shareholders to solicit votes. In essence, the Petition seeks another tool to assure the continued rein of incumbent corporate Directors. The corporations that the BRT represents come to the table with unclean hands. The Securities and Exchange Commission (“SEC”) should thoroughly consider eliminating the unreasonable hoops through which corporations unreasonably cause Shareholders to jump in order to obtain Shareholder lists.



**I. Proxy Campaign of Committee**

The Committee of Concerned Shareholders (“Committee”), formerly known as the Committee of Concerned Luby's Shareholders, consisting of shareholders of Luby’s, Inc. (“Luby's”) who met on a Yahoo! Finance Message Board in 2000, is the first grass-roots shareholder group to conduct a formal proxy contest. Luby’s, headquartered in San Antonio, Texas, was then a near 230-unit cafeteria chain with annual sales of approximately \$500 million. Its shares are listed for trading on the New York Stock Exchange.

The Committee’s Director-nominees received 24% of the votes cast. Two (2) of the Shareholder Proposals that it supported (i.e., removal of all anti-takeover defenses, annual election of all Directors) received approximately 60% of the votes cast.

Some have said that the Committee's efforts with Luby's caused the departure of its former Chief Executive Officer and President, the nomination of a Director-candidate with hands-on restaurant experience, the entry of a restaurant experienced white-knight/investor and the relinquishment of position by the former Chairman of the Board.

The Committee's efforts revealed the substantial difficulties, e.g., obtaining Shareholder lists, that individual Shareholders would face in an attempt to hold Directors accountable. Further, it showed that the extent of Shareholder dissatisfaction might not be proportional to the size of stock holdings of Director-candidate nominators. In our proxy contest at Luby's, even though our Director-candidate nominators held about 1/4% of the outstanding stock, our candidates garnered 24% of the vote.

## **II. Committee's Access to Shareholder Lists**

In an attempt to identify fellow Shareholders, the Committee was subjected to a royal-runaround that may be typical of the efforts made by corporations to entrench incumbent Directors. The Committee sought separate Shareholder and non-objecting beneficial owner ("NOBO") lists from Luby's. Our purpose was proper. Luby's was incorporated in Delaware. Delaware Corporation Law, Section 220, provides, "Where the stockholder seeks to inspect ... list of stockholders ... the burden of proof shall be upon the corporation to establish that the inspection such stockholder seeks is for an improper purpose." Luby's engaged in a series of games to attempt to deny the Committee's legitimate rights.

Luby's, initially, relied upon every technicality to deny our request. After we overcame that hurdle, Luby's feigned an inability to comprehend the request. Despite a very explicit request, Luby's offered to provide less desirable alternative information. Luby's referred the Committee to American Stock Transfer ("AST"), its stock transfer agent, to obtain the requested information. AST stated that it could not provide the information until Luby's provided written authorization and that Luby's had not done so. The Committee asked the SEC for assistance to obtain the Shareholder lists. The SEC claimed that it was a matter of state law and declined our request. After the Committee had engaged legal counsel and threatened to bring a lawsuit in Delaware, Luby's finally provided the written authorization to AST. AST then demanded payment of substantial funds in order to produce the requested information on a computer disk. (The Committee had requested that the data be provided in an Excel format on a floppy disk after hearing that some transfer agents produced such data on magnetic tapes where machines that could read the tapes were substantially non-existent.) The Committee repeatedly requested that Luby's and AST justify their alleged costs and/or provide a copy of a published schedule of charges. The requests were ignored. During that time, Luby's mailed literature to its Shareholders. Evidently, Luby's had used the same Shareholder information that we had requested. The Committee asked Luby's to produce that mailing list without charge. That request was ignored. As the proxy mailing date fast approached, the Committee was, in effect, coerced to meet AST's demands. No NOBO list was provided.

Essentially, Luby's refused to recognize its legal obligations to produce promptly the requested materials at its additional cost --- nada, zip, zilch.



Corporations could easily play the same indefensible dilatory game with all Shareholders --- Individuals or Institutions --- who wish to communicate with one another for proxy solicitation purposes.



### III. Conclusion

The SEC should visit the entire issue of Shareholder communications for proxy solicitation purposes and not limit itself to the issue of communications directed from a company to its Shareholders.

A fair proxy solicitation process is essential to Director accountability. A cornerstone of that process is the ability of Shareholders to communicate with one another. Apparently, the BRT's only concern is that Shareholders hear the messages of its members --- company sponsored Directors be elected or re-elected. Such is not conducive to Director accountability.

Please communicate with me in the event that further information is desired.

Very truly yours,

LES GREENBERG,  
Chairman

LG:pg