

INTERNATIONAL BROTHERHOOD OF TEAMSTERS

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May 21, 2014

The Honorable Mary Jo White
Chair
United States Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: File No. 4-637, Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities

Dear Chairwoman White,

I write you on behalf of the 1.4 million members of the International Brotherhood of Teamsters ("Teamsters") in support of the Committee on Disclosure of Corporate Political Spending's ("Committee") Petition for Rulemaking ("Petition"). The Petition asks the Securities and Exchange Commission ("Commission") to develop rules to require public companies to disclose the use of corporate resources for political activities to shareholders.

The Teamsters are one of the largest and most powerful labor unions in North America, with active members in every state in the United States. Through our affiliated pension and benefit funds, the Teamsters have more than \$100 billion invested in the capital markets. Teamster members also participate in markets as individual investors and as participants in public pension plans and plans sponsored by their employers.

We call on the SEC to recognize the growing consensus among investors that meaningful disclosure of corporate political spending is sorely needed. The ever-changing landscape of campaign finance necessitates standardized disclosure requirements be formulated as soon as possible. We also call on the Commission to make such disclosures comprehensive, accounting for the evolving methods corporations use to directly and indirectly fund elections and issue based advocacy campaigns, both on the federal and local level, using shareholder funds.

Sustained Investor Desire for Rulemaking

Investors continue to demand corporate disclosure of political expenditures by submitting and supporting shareholder resolutions that seek greater transparency. The Corporate Secretary 2014 *Proxy Report* reveals that political disclosure requests have accounted for 30 percent of all social resolutions filed this year, including resolutions at 48 corporations as part of an early proxy season initiative. In addition to traditional disclosure requests, many investors are specifically demanding that companies report their federal and state lobbying, including payments to trade associations and for support and lobbying of organizations that endorse model legislation. According to the CEO of Proxy Impact Michael Passoff, “political spending is the single most dominant issue about which investors are seeking more disclosure.”¹

The 2014 proxy season is the latest in a wave of shareholder initiatives on corporate political and legislative advocacy issues. The nearly 130 resolutions filed in 2013 requesting disclosure marked the fourth consecutive year of growth for such political spending disclosure requests, more than twice the resolutions filed in 2010.² These resolutions have had notable success, with two obtaining over 50 percent support, eleven votes exceeding the 40 percent threshold, and all resolutions on average obtaining just under 25 percent support.³ These include disclosure initiatives at corporations including: CF Industries, Alliant Techsystems, Marathon Oil, McKesson, Valero Energy and Peabody Energy, as well as others. Moreover, Teamsters believe that the growing trend for voluntary disclosure should be seen as a direct reaction to ongoing shareholder demands.

The CPA-Zicklin Index has documented this increased trend in disclosure over the past decade. When the Center for Political Accountability began asking corporations to voluntarily disclose and oversee political spending in 2003, few companies were doing so. Yet in 2013, almost 70 percent of the companies at the upper levels of the S&P 500 were disclosing spending made directly to candidates, parties and committees. Of these same 195 companies, 43 percent revealed their payments to trade associations and the amounts used for political and lobbying purposes. This was up from 36 percent in 2012. Also in 2013, 14 percent asked trade associations not to use contributions for lobbying purposes, up from 5 percent in 2012.⁴

1. David Bogoslaw, “Political Disclosures a Key Aim of 2014 Proxy Proposals,” *Corporate Secretary*, March 11, 2014, <http://www.corporatesecretary.com/articles/proxy-voting-shareholder-actions/12678/political-disclosures-key-aim-2014-proxy-proposals/>.

2. Welsh, Heidi, and Michael Passoff, *Proxy Report 2014: Tenth Anniversary Edition (As You Sow, 2014)*, 38-47, 2014, <http://www.asyousow.org/publications/ProxyPreview2014.pdf>.

3. *Ibid.*, 38.

4. Bruce Freed et al., *The 2013 CPA-Zicklin Index of Corporate Political Accountability and Disclosure: How Leading Companies Are Strengthening* (Washington, D.C.: Center For Political Accountability, 2013), 6-7, bit.ly/1jRtgzb.

Despite such voluntary disclosures undertaken by some, many companies remain unwilling to listen to shareholders or the investment community absent a shareholder resolution forcing them to do so. As Michael Passoff has observed, “Fewer companies have been willing, when initially contacted [by shareholders], to disclose their political spending, so more of those are going to a vote.”⁵ Arguments that the administrative burdens of disclosure create major hurdles towards implementation have little merit, as seen by the efforts of Merck. After opposing efforts around disclosure, the company reexamined the specific requests being made of it and, “realized that the complexities of what was being asked for were far less daunting than we originally thought,” according to Merck Vice President of State Government Affairs and Policy, Charles Grezlak. “The administrative burden wasn’t much of a problem.”⁶ Existing accounting and tracking systems already exist to comply with IRS and numerous other disclosure requirements. There is no reason strong disclosure policies cannot be reasonably integrated into these existing systems.

Need for Unified Disclosure

The International Brotherhood of Teamsters, like all major unions, is required to report a high level of detail regarding its operations. The Teamsters Union operates under the federal Labor-Management Reporting Act for both itself and its state and local affiliates, which requires it to itemize all political spending, however defined, to any recipient that aggregates to at least \$5,000.⁷ Existing disclosure requirements undertaken by Teamsters are notable in their contrast to the lack of requirements imposed on publicly traded corporations. There is no federal system that requires political disclosure for publicly traded corporations. Shareholders are instead forced to rely on voluntary disclosure, or even secondary disclosure, where a donation is made to an organization that in turn discloses its donors. We do not believe that investors should be responsible for learning about controversial corporate investments from such second-hand sources as a substitute for receiving the information from their own company.

5. Bogoslaw, “Political Disclosures a Key Aim of 2014 Proxy Proposals.”

6. Nicholas Rummell, “Political Disclosures: Reaching the Tipping Point,” *Corporate Secretary*, October 10, 2013, accessed April 23, 2014, <http://www.corporatesecretary.com/articles/proxy-voting-shareholder-actions/12556/political-disclosures-reaching-tipping-point/>.

7. “Labor-Management Reporting and Disclosure Procedure,” Title 29 U.S. Code, Sec. 401 et seq. 2012 ed. accessed March 23, 2014, <http://www.gpo.gov/fdsys/pkg/USCODE-2012-title29/pdf/USCODE-2012-title29-chap11.pdf>.

This absence of a standard disclosure requirement leads to an obfuscation of corporate operations for the entire investor community. Considering the amount of funds corporations spend on elections in our current campaign finance system, the expenditures, and potential risks, created by this system are significant. The current process of self-regulation makes the existing system ripe for abuse.

Avenues available for a corporation to invest in politics create numerous options for circumventing anything but the most rigorous self-imposed disclosure requirements. Whether a corporation participates in the political process through contributions to trade associations; 527 groups, or directly to candidates, parties or committees—they should be transparent about their expenditures.

According to the 2013 CPA-Zicklin study, 104 of the 195 companies reviewed disclosed information about their contributions to state candidates, parties, and committees. Nearly 51 percent disclosed information about their contributions to entities organized as 527 groups in 2013, and only 29 percent of companies disclosed information about their independent expenditures.⁸ This web of partial disclosures is not an adequate substitute for the robust disclosure requirements shareholders are clamoring for. Despite a significant uptick in recent years of disclosures from companies, the overall number and quality of most voluntarily imposed disclosures are inadequate.

According to the CPA-Zicklin index “Between 2012 and 2013, many leading American companies have expanded political spending disclosure and accountability, reflecting a sustained national shifting toward more comprehensive disclosure that further establishes political disclosure as a mainstream corporate practice.”⁹ While a positive trend is emerging in the face of the ongoing realization that corporate risk is directly associated with an absence of disclosure policies, the lack of a uniform and comprehensive disclosure requirement allows companies to mislead shareholders regarding their companies’ political expenditures, denying shareholders an accurate picture of their corporation’s activities. As is the case for most issues of transparency, disclosure should be considered an all-or-nothing game. Relying on self-governance from a portion of corporations has proven to be woefully inadequate.

8. Freed et al., *The 2013 CPA-Zicklin Index of Corporate Political Accountability and Disclosure*, 13.

9. *Ibid.*, 6.

Investor Risks from Poor Disclosure

In addition the wide menu of options available to companies for spending their money in electoral campaigns, the existing web of intertwining state and local disclosure requirements leaves enormous loopholes to be exploited. The lack of parity across state lines can be readily exploited in order to hide contributions from shareholders. With the ever increasing costs of elections, including the first potential \$100 million Senate race occurring in Kentucky this year, the stakes continue to be heightened, as corporate spending grows in order to maintain its influence in the political sphere.

The lack of federal disclosure requirements, in fact, leaves investors with few options for determining if a corporation is even adhering to its own self-imposed rules in the first place. Considering the shadowy nature of a large swath of the campaign finance system and the lack of existing federal disclosure requirements, there is a limited likelihood that many bad actors are even being exposed. Despite these hurdles, there have been numerous examples of corporations doing exactly that. FedEx has proven to be one such example, as the company has a policy stating it “does not make corporate contributions to groups organized under section 527 of the Internal Revenue Code, except to the organizational committees of the Democratic and Republican national party conventions and the annual Democratic and Republican Governor’s conferences.” FedEx even reiterated this policy in a proxy statement opposing a shareholder proposal in 2013 that would have required the company to disclose all political spending. Contrary to its own touted policy, however, FedEx made contributions to at least three additional § 527 organizations between 2011 and 2013, totaling \$63,400.¹⁰ Absent comprehensive disclosure requirements, investors will continue to be exposed to misleading and unenforceable policies instituted by companies like FedEx.

¹⁰*The Myth of Corporate Disclosure Exposed* (Washington, D.C.: Citizens for Responsibility and Ethics in Washington, 2014), accessed May 20, 2014, http://www.citizensforethics.org/page/-/PDFs/Reports/4_15_2014_Myth_of_Corporate_Disclosure_Exposed_The_Problem_with_Political_Spending_Reports_CREW.pdf?nocdn=1.

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Such a conflict between stated policies and real world actions create numerous issues for shareholders. In 2010, Target donated \$150,000 in cash and in-kind goods and services to a political action group whose money directly bought advertisements for an anti-gay marriage gubernatorial candidate. The company actively promotes itself as friendly to all sexual orientations, and even boasts about its recognition as one of the best places to work for LGBT Equality on its website.¹¹ Ironically, Human Rights Campaign (“HRC”), the organization that awarded Target with numerous awards for their work on sexual equality, does not factor political contributions and support to candidates in one of their major recognitions. Nevertheless, following the release of this donation, HRC, among others, demanded Target support pro-LGBT candidates.

Target faced a similar large-scale consumer and shareholder backlash arising from the donation.¹² Most revealing is that the states have been forced to pick up the slack where a lack of federal oversight has lagged behind. Absent disclosure requirements passed by the state of Minnesota earlier that year, the owners of Target would never have known of the donation, and corrective action is even less likely to have occurred. Not surprisingly, a 2008 survey of directors by the US Conference Board found that 60 percent of directors agreed that corporate reporting of political spending to shareholders was “necessary to protect companies from risk.”¹³ This sort of a disclosure requirement will augment the ability of boards of directors to oversee corporate political spending.

Scope of Disclosure

In order to effectively identify the business vulnerabilities created by political spending, strong disclosure should be required across all fronts of corporate political activities. Active participation in trade associations and grassroots social welfare organizations provides near total cover for the current system which is devoid of strong corporate disclosure requirements. When such payments are made, but not disclosed, shareholders are opened up to numerous unforeseen risks.

11. Deena Fidas and Liz Cooper, *Corporate Equality Index 2014: Rating American Work Places On Lesbian, Gay, Bisexual and Transgender Equality* (Washington, D.C.: Human Rights Campaign, 2014), accessed April 23, 2014, [http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI_2014_final_draft_7.pdf#_utma=149406063.678342108.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463&_utmb=149406063.2.9.1398283464009&_utmc=149406063&_utmz=149406063.1398283463](http://hrc-assets.s3-website-us-east-1.amazonaws.com/files/assets/resources/CEI_2014_final_draft_7.pdf#_utma=149406063.678342108.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463.1398283463&_utmb=149406063.2.9.1398283464009&_utmc=149406063&_utmz=149406063.1398283463).

12. “Human Rights Campaign Demands Target and Best Buy ‘make It Right,’ Even Out Donations to Anti-Gay Politician,” *Huffington Post*, July 30, 2010, accessed April 23, 2014, http://www.huffingtonpost.com/2010/07/30/human-rights-campaign-target-best-buy_n_666003.html.

13. Bruce Freed and Karl Sandstrom, “Political Money: The Need for Director Oversight”, *Executive Action Series* no. 263 (April 2008); accessed April 23, 2014, <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/1433>.

Strong disclosure policies should not only include direct political spending, but all issue-based lobbying undertaken on a corporation's behalf. Based on the limited disclosure information available, S&P 500 companies spent more than \$1.1 billion on most traditional political activities in 2010 (including 527 political committees, state-level candidates, parties, ballot initiatives and federal lobbying), of that, 87 percent (\$979.3 million) went to federal lobbying.

What appears on its face as a corporate focus on lobbying, is likely not reflective of the entire situation. More likely, it reflects the rapid adaptation of corporations to the tools at their disposal following the *Citizens United* decision (which was rendered in January 2010). In order to understand the trend of corporate investments in politics following the *Citizens United* decision, it is best to compare 2010 spending to the prior mid-term election in 2006 (as mid-term elections typically have different spending levels than presidential election years).

Outside spending (including independent expenditures, electioneering communications and communication costs, but excluding party committees) accounted for nearly \$68.9 million in the 2006 cycle. By 2010, that increased nearly 427 percent, reaching approximately \$294.2 million, and almost matching what outside groups had spent during the last presidential cycle.¹⁴ Despite the enormous role outside groups such as 501(c)4 social welfare groups play in the realm of outside spending, only 26 companies in the entire S&P 500 included those groups in their 2010 disclosures. Only one quarter of S&P 500 companies disclosed policies on indirect political spending at all.¹⁵ Such a trend makes it very necessary for the Commission to include contributions to such groups in any rulemaking.

The Teamsters believe that the Commission should specifically consider requiring public companies to report their voluntary donations to all other entities that engage in political and lobbying activities under IRC Sections 501(c)(4) and c(6), as well as under IRC Section 527, which covers all "political organizations" regardless of how and whether they otherwise register or report their activities. Organizations like the American Legislative Exchange Council (ALEC) serve as example of why non-traditional political organizations must be included in any regulation. ALEC provided model legislation for Florida's controversial Stand

14. Public Citizen's Congress Watch, *12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process* (Washington, DC: Public Citizen Congress Watch Division, 2011), 9, accessed April 30, 2014, <http://www.citizen.org/documents/Citizens-United-20110113.pdf>

15. Heidi Welsh and Robin Young, *Corporate Governance of Political Expenditures: 2011 Benchmark Report On S&P 500 Companies* (Boonsboro, MD: Sustainable Investments Institute, 2011), 8, accessed April 24, 2014, http://www.irrcinstitute.org/pdf/Political_Spending_Report_Nov_10_2011.pdf.

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Your Ground Law, which following the killing of Trayvon Martin, lead over 70 companies to determine that association with ALEC and some of their practices were not worth the political and reputational risk and left. If groups such as ALEC continue to be on the forefront of such controversial legislation, shareholders need to be privy to this information. Considering the increased role outside organizations play in the political realm in the post *Citizens United* world, the inclusion of these donations is vital to determining the true picture of the risks or benefits being inherited by shareholders. Investors should not have to wait for fallout from poor political or advocacy investments in order to hold their corporate governors accountable. They should have the tools to make these investment decisions from the outset.

Conclusion

The financial impact of increased corporate political spending on investors is tangible and significant. The Securities and Exchange Commission must do more than acknowledge these risks; it should take an active stance to protect investors from the lack of mandated transparency and regulation in this area. We strongly urge the SEC to accept the "Petition to Require Public Companies to Disclose to Shareholders the Use of Corporate Resources for Political Activities" and to initiate the requested rulemaking as swiftly as possible.

Sincerely,

A handwritten signature in black ink that reads "Ken Hall". The signature is written in a cursive, slightly slanted style.

Ken Hall
General Secretary-Treasurer

KH/sl