Keith Paul Bishop

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<u>Via Email (rule-comments@sec.gov)</u>

Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-0609

<u>Petition For Rulemaking Submitted by the Committee on Disclosure of Political Spending (the "**Petition**")</u>

Dear Ms. Murphy:

I am writing to comment on the Petition and recommend that the Securities and Exchange Commission (the "**Commission**") not initiate an additional rulemaking project to require disclosure of corporate political spending.

1. <u>Background</u>.

I am an attorney in private practice in Irvine, California and an Adjunct Professor of Law at Chapman University Law School.

I previously served as California's Commissioner of Corporations and in that capacity administered and enforced California's securities laws. I have also served as Co-Chairman of the Corporations Committee of the Business Law Section of the California State Bar and Chairman of the Business and Corporate Law Section of the Orange County (California) Bar Association. I am writing in my individual capacity and not on behalf of my law firm, the law school or any of my law firm's clients.

2. <u>The Proposal Will Add to the Cumulative Disclosure Burdens Faced by Reporting Companies</u>.

The disclosure requirements imposed on publicly traded companies have increased significantly in recent years. The petitioners correctly note "the Commission has developed an *elaborate* body of disclosure rules that provide public company shareholders with detailed information on the companies in which they invest." (emphasis added). Even if the *incremental* burden of the petitioners' proposed disclosures are determined to be minimal, the Commission should not ignore the *cumulative* impact of the increasing number of disclosure requirements.[1] I have prepared the following chart to provide some perspective on the cumulative burden of new disclosure requirements impacting companies' proxy statements since 2008:

Rule	**Number of Words**
Shareholder Approval of Executive Compensation and Golden Parachute Compensation	18,529
Proxy Disclosure Enhancements (Correction)	21,976
Amendments to Rules Requiring Internet Availability of Proxy Materials	4,027
Shareholder Approval of Executive Compensation of TARP Recipients	7,235
Technical Amendment to Item 407 of Regulation S-K	1,261
Internet Availability of Proxy Materials; Regulation of Takeovers and Security Holder Communications; Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings; Certain Other Related Rule Corrections	5,298
Electronic Shareholder Forums	7,731

Moreover, the Commission has often misjudged the disclosure impacts of its regulatory requirements. *See*, e.g., *Business Roundtable v. SEC*, Case No. No. 10-1305 (D.C. Cir. July 22, 2011) ("Here the Commission inconsistently and opportunistically framed the costs and benefits of the rule; failed adequately to quantify the certain costs or to explain why those costs could not be quantified; neglected to support its predictive judgments; contradicted itself; and failed to respond to substantial problems raised by commenters."), *American Equity Investment Life Insurance Company v. SEC*, 613 F.3d 166, 178 (D.C. Cir. 2010) ("The Commission's efficiency analysis is similarly arbitrary and capricious."); and *Chamber of Commerce v. SEC*, 412 F.3d 133, 144 (D.C. Cir. 2005) ("In sum, the Commission violated its obligation under 15 U.S.C. § 80a-2(c), and therefore the APA, in failing adequately to consider the costs imposed upon funds by the two challenged conditions.").

[1] I am not aware that the Commission has reduced any disclosure requirement during the approximately 3-½ years covered by this table.

3. <u>Strong Interest is not Majority Support</u>.

The petitioners present data that show substantial interest in disclosure of corporate political spending amongst specific shareholder groups. For example, they note "during the 2011 proxy season proposals requesting disclosure on corporate political spending enjoyed, on average 32.5% support." *This means that more than 2/3 of the shareholders on average did not support those proposals.* Even more tellingly, the petitioners cite no instance in the 2011 proxy season in which a majority of shareholders supported a political spending resolution.

4. <u>Adoption of the Petitioner's Proposal Would Result in a Forced Subsidy by the Majority Shareholders</u>.

The costs of the petitioners' proposal will be borne by 100% of the shareholders even though petitioners have acknowledged that when put to a vote, less than 1/3 of the shareholders on average support political spending proposals. Accordingly, petitioners are in effect asking the two-thirds to subsidize the interest of the minority. Petitioners have provided no justification for this wealth transfer from the majority to the minority.[2]

5. <u>The Petitioners Have Failed to Demonstrate that Mandatory Disclosure is Necessary</u>.

Petitioners note that since 2004 "large public companies have increasingly agreed voluntarily to adopt policies requiring disclosure of the company's [sic] spending on politics." In addition, they provide data that demonstrate that the number of shareholder proposals with respect to political spending has increased. Rather than support the need for additional mandatory disclosure, the petitioners' evidence actually demonstrates the lack of any need for government intervention.

The fact that an increasing number of companies have voluntarily disclosed political spending demonstrates that there is no impediment to making these disclosures. Moreover, the petitioners' own evidence supports the conclusion that private ordering is occurring. In addition, the fact that shareholders have been able to present their political spending proposals at annual meetings demonstrates that there are no barriers to shareholder voting on those proposals. Thus, the only problem from the petitioners' perspective seems to be the shareholders don't like the proposals. Consequently, the petitioners are trying to make an end-run on shareholder democracy by asking the Commission to intervene and mandate a result that the shareholders do not favor.

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[2] Petitioners note that interest is strong among very large institutional investors. Indeed, they cite one investor with over $450 billion in assets under management. Many shareholders are likely to be substantially smaller. Thus, the petitioners' proposal is tantamount to requiring David to subsidize Goliath.

6. <u>Conclusion</u>

The Commission should be cognizant of the fact that every new disclosure mandate adds to the cumulative burden on reporting companies. Meeting no success at the ballot box, the petitioners are now asking the Commission to overturn the will of the majority of shareholders and to subsidize the interests of the minority. I urge the Commission to reject the petitioners' proposal.

Very Truly Yours,

/s/ Keith Paul Bishop