



STETSON UNIVERSITY

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549

Comments of Ciara Torres-Spelliscy
Assistant Professor of Law at Stetson University College of Law¹
before the Securities and Exchange Commission
Regarding Petition File No. 4-637
November 2, 2011

Dear Ms. Murphy,

I write as a lawyer, a professor and an investor to share why it is essential that the Securities and Exchange Commission (the “Commission”) act to bring greater transparency to corporate political spending.

Executive Summary

This Comment will open with an introduction about the ways that publicly-traded corporations can legally mask their role in U.S. elections. Then in Part II, I offer a comparison from the United Kingdom, which is four decades ahead of America in providing transparency for corporate political spending. In Part III, I will explain how a new disclosure rule about political spending is in line with the Commission’s previous anti-pay-to-play rules. In Part IV, I argue that the Commission should act because its sister agencies, the FEC, IRS and FCC, have failed to address this issue. In Part V, I outline the potential scope of a new SEC disclosure rule. In Part VI, I explain why such a disclosure rule would be constitutional. And in Part VII, I conclude with a review of the many business reasons for a Commission rule requiring transparency of corporate political spending.

Part I. Corporate Political Spending in the U.S. Lacks Transparency

Whether wittingly or unwittingly, the Supreme Court created corporate and securities law problems for shareholders of publicly-traded companies when it ruled in *Citizens United v. FEC* in 2010² that corporations have the

¹ This comment is my own and should not be construed as the opinion of my University.

² For a discussion of the shareholder rights implicated by *Citizens United*, see Lucian Bebchuk & Robert Jackson, *Corporate Political Speech Who Decides?* 124 HARV. L. REV. 83, 84 (Nov.

right to spend unlimited corporate funds in American elections.³ This new corporate political spending has been unleashed into a regulatory environment rife with loopholes. In short, the way the tax code, corporate and securities laws, and campaign finance laws interact enables publicly-traded U.S. corporations to legally mask their political spending, thereby thwarting accountability from customers, shareholders, and potential investors.

The 2010 Midterm federal election showed the scale of undisclosed political spending. Studies have shown that between one third and one half of the independent spending in 2010 was from unnamed sources.⁴ This dark spending is only poised to increase in future elections. Money can get from a publicly-traded corporation into the political system without detection in the following way:

- First, the SEC currently requires no reporting of political spending. This enables a publicly-traded company to give a donation to a politically active nonprofit (usually organized under the Internal Revenue Code §§ 501(c)(4) or 501(c)(6))⁵ without reporting this donation to the Commission.⁶
- Second, the politically active nonprofit, such as a § 501(c)(6) trade association, purchases a political ad supporting a federal candidate. This nonprofit will report these corporate donations to the Internal Revenue Service (“IRS”), but not to the public.⁷

2010) (arguing for rules that “mandate detailed and robust disclosure to shareholders of the amounts and beneficiaries of a corporation’s political spending, whether made directly by the company or indirectly through intermediaries”); Ciara Torres-Spelliscy, *Corporate Campaign Spending, Giving Shareholders a Voice* (Brennan Center 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1550990 (arguing for shareholder disclosure and consent).

³ *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876 (2010).

⁴ Bill De Blasio, *Citizens United and the 2010 Midterm Elections*, 3 (Public Advocate for the City of New York Dec. 2010), <http://advocate.nyc.gov/files/12-06-10CitizensUnitedReport.pdf> (finding 36% of outside spending in the 2010 federal election was funded by secret sources); Congress Watch, *12 Months After: The Effects of Citizens United on Elections and the Integrity of the Legislative Process*, 12 (Public Citizen Jan. 2011), <http://www.citizen.org/documents/Citizens-United-20110113.pdf> (finding “[g]roups that did not provide any information about their sources of money collectively spent \$135.6 million, 46.1 percent of the total spent by outside groups during the election cycle.”).

⁵ 26 U.S.C. § 501(c)(4); § 501(c)(6).

⁶ The SEC requires no disclosure of corporate political spending. Bebachuk et al, Committee on Disclosure of Corporate Political Spending Petition for Rulemaking at Securities and Exchange Commission (Aug. 3, 2011), <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf> (“Because the Commission’s current rules do not require public companies to give shareholders detailed information on corporate spending on politics, shareholders cannot play the role the Court described.”).

⁷ L. PAIGE WHITAKER, ERIKA K. LUNDER, KATE M. MANUEL, JACK MASKELL, & MICHAEL V. SEITZINGER, CONG. RESEARCH SERV., R41096, LEGISLATIVE OPTIONS AFTER *CITIZENS UNITED V. FEC*: CONSTITUTIONAL AND LEGAL ISSUES 6 n.41 (2010), <http://www.fas.org/sgp/crs/misc/R41096.pdf> (“Under the

- And third, the nonprofit reports to the Federal Election Commission (“FEC”) that it has purchased a political ad. The FEC only requires the nonprofit to report earmarked donations.⁸ If the publicly-traded corporation did not “earmark” the donation, which nearly no sophisticated donor would, then the role of the corporation will never be revealed to the public.

The investing public can see that the nonprofit bought a political ad, but they cannot discern the role of the publicly-traded company in underwriting the purchase. As Peter Stone at the Center for Public Integrity reported on the eve of the 2010 Midterm election, “[m]any corporations seem inclined to give to groups that are allowed by tax laws to keep their donations anonymous.”⁹

The Securities and Exchange Commission is uniquely positioned to act as the guardians of the integrity of America’s capital markets to protect current shareholders and potential investors.¹⁰ The Commission should require that publicly-traded corporations disclose all political expenditures so that shareholders have a full and complete picture of how much corporate money is being placed into the political sphere.

Part II. Transparency for Corporate Political Spending in the U.K.

We, in the United States, are at least forty years behind our peers in the United Kingdom, which has required disclosure of corporate political spending

Internal Revenue Code, § 501(c) organizations that file an annual information return (Form 990) are generally required to disclose significant donors (typically those who give at least \$5000 during the year) to the Internal Revenue Service (IRS). 26 C.F.R. § 1.6033-2(a)(2)(ii)(f). No identifying information of donors to § 501(c) organizations is subject to public disclosure under the tax laws except in the case of private foundations (which are a type of § 501(c)(3) organization). IRC § 6104(b), (d).”).

⁸ According to the instructions for FEC Form 9, “[i]f you are a corporation, labor organization or Qualified Nonprofit Corporation making communications permissible under [11 C.F.R.] 114.15 and you received no donations made specifically for the purpose of funding electioneering communications, enter ‘0’ (zero).” Fed. Election Comm’n, Instructions for Preparing FEC Form 9 (24 Hour Notice of Disbursements for Electioneering Communications) 4 (undated), <http://www.fec.gov/pdf/forms/fecfrm9i.pdf>; see also Fed. Election Comm’n, FEC Form 5 Report of Independent Expenditures Made and Contributions Received to be Used by Persons (Other than Political Committees) including Qualified Nonprofit Corporations (2009) <http://www.fec.gov/pdf/forms/fecfrm5.pdf>.

⁹ Peter Stone, *Campaign Cash: The Independent Fundraising Gold Rush Since ‘Citizens United’ Ruling* (Ctr. for Public Integrity Oct. 4, 2010), <http://www.publicintegrity.org/articles/entry/2462/>.

¹⁰ SEC, *The Investor’s Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation* (Oct. 24, 2011) (“The mission of the U.S. Securities and Exchange Commission is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.”).

since the 1960s.¹¹ The U.K.'s Companies Act of 1967 imposed a duty on companies to declare political donations in the company's annual report over £50, which was subsequently increased to £200 in 1980.¹² However, this information was not systematically reported or aggregated.¹³ In the 1990s, the lack of readily accessible data led the U.K. press to complain about the lack of transparency around party financing, including reports of millions of pounds from unnamed sources.¹⁴

In 2000, under the Political Parties, Elections and Referendums Act, the U.K. adopted amendments to its Companies Act, which improved reporting requirements for corporate political contributions.¹⁵ The Act covers political advertisements in addition to direct donations to candidates or parties.¹⁶ Under the Companies Act, if a publicly-traded company made a political donation of over £2,000, then the directors' annual report to the shareholders must include the donation's recipient and amount.¹⁷ The Companies Act covers political spending by a U.K. company in elections for public office in the U.K. and in any European Union (EU) member state.¹⁸ After the 2000

¹¹ Ciara Torres-Spelliscy & Kathy Fogel, *Shareholder-Authorized Corporate Political Spending in the United Kingdom*, 46 U. OF SAN FRANCISCO L. REV. 479 (Forthcoming Spring 2012), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1853706.

¹² Committee on Standards in Public Life, Fifth Report § 6.24 (vol. 1 1998), http://www.public-standards.org.uk/Library/OurWork/5thInquiry_FullReport.pdf.

¹³ *Id.* at § 6.25 ("there is no central record of the companies that give political donations. That information is held in the reports of over one million registered UK companies.").

¹⁴ Rosie Waterhouse, *Source of Pounds 15m in Donations to Tory Party Not Disclosed*, THE INDEPENDENT, (June 16, 1993) (reporting "The source of more than [] 15 [million pounds] in donations to the Conservative Party made before the 1992 general election remains a mystery despite an exhaustive search of the accounts of 5,000 companies to see if they declared political donations last year.").

¹⁵ Political Parties, Elections and Referendums Act at §§ 139–140, & sched. 19, http://www.legislation.gov.uk/ukpga/2000/41/pdfs/ukpga_20000041_en.pdf; see also Explanatory Notes to Political Parties, Elections and Referendums Act (2000), c. 41, http://www.opsi.gov.uk/ACTS/acts2000/en/ukpgaen_20000041_en_1. The Companies Act was amended again in 2006. Companies Act at c. 46, see also Companies Act 2006 Regulatory Assessment (2007), <http://www.berr.gov.uk/files/file29937.pdf>. In addition, directors are jointly and severally liable for any unauthorized political expenditures plus interest. *Id.* at § 369.

¹⁶ Companies House, *Companies Act* (Oct. 1 2008), <http://www.companieshouse.gov.uk/companiesAct/implementations/oct2008.shtml> ("A company must also be authorised by its members before it incurs expenditure in respect of political activities such as advertising, promotion or otherwise supporting a political party, political organisation [o]r an independent candidate in an election.").

¹⁷ Political Parties, Elections and Referendums Act, *supra* note 15, at § 140; see also ELECTORAL COMMISSION, GUIDANCE TO COMPANIES: POLITICAL DONATIONS AND LENDING (2007), http://www.electoralcommission.org.uk/_data/assets/electoral_commission_pdf_file/0014/13703/Companies-Guidance-Final1_27776-20443_E_N_S_W_.pdf.

¹⁸ Freshfields Bruckhaus Deringer LLP, *The 2011 AGM Hot Topics*, 21 (Dec. 2010),

amendments, companies have given detailed accounts of how they spent political money in their annual reports to investors down to the pound.¹⁹ In the U.K., the directors' report is equivalent to a company's annual report on Form 10-K to the SEC in the United States, and £2,000 is roughly equal to \$3,000 at current exchange rates.²⁰ We can learn from the U.K.'s example, including their reasonable disclosure threshold of a few thousand dollars.²¹

Part III. The Commission's Leadership on Anti-Pay-to-Play Rules

The rule making contemplated by File No. 4-637 is within the Commission's authority to safeguard the nation's capital markets under the 1933 and 1934 Acts and is in line with previous rule makings on similar subject matters.²² The Commission has already shown admirable leadership in the area of anti-pay-to-play regulations: both by embracing the Municipal Securities Rulemaking Board regulations dating back to 1994,²³ as well as

<http://www.freshfields.com/publications/pdfs/2010/dec10/29290.pdf> (British law firm Freshfields reports, "From 1 October 2008, the scope of statutory control was extended to donations to, and expenditure on, independent candidates at any election to public office in the UK or any EU member state—previous rules applied only to support for political parties and organizations.").

¹⁹ See for example, British American Tobacco, *Annual Report*, 64 (2010).

²⁰ The original reporting threshold in the 2000 law was £200. Political Parties, Elections and Referendums Act 2000, *supra* note 15 at § 140. The amount was later raised to £2,000 in 2007 under secondary legislation, the British equivalent of American implementing regulations. See DEPARTMENT FOR BUSINESS ENTERPRISE & REGULATORY REFORM, GOVERNMENT RESPONSE TO CONSULTATION ON THE COMPANIES ACT 2006 – ACCOUNTING AND REPORTING REGULATIONS (2007), <http://www.berr.gov.uk/files/file40480.doc>.

²¹ I caution the SEC against adopting disclosure thresholds that are too low. Courts across the country have routinely invalidated disclosure laws that capture tiny expenditures. See *Vote Choice, Inc. v. DiStefano*, 4 F.3d 26, 29 (1st Cir. 1993) (striking down a Rhode Island law that required PACs to disclose the identity of every contributor, even when the contribution was as small as \$1, a practice known as "first dollar disclosure"); see also *Canyon Ferry Rd. Baptist Church v. Unsworth*, 556 F.3d 1021, 1033 (9th Cir. 2009) (holding disclosure statute unconstitutional as applied to a one-time in-kind *de minimis* expenditure in a ballot measure context and stating "the value of this financial information to the voters declines drastically as the value of the expenditure or contribution sinks to a negligible level").

²² George S. Branch & James A. Rubright, *Integrity of Management Disclosures Under the Federal Securities Laws*, 37 BUS. LAW. 1447, 1453 (1982) (citing H.R. Rep. No. 85-73, at 1-2 (1933)) (address by President Franklin Roosevelt) (investments "should only be made on the basis of full disclosure of all information necessary 'to bring into the full glare of publicity those elements of real and unreal values which lie behind a security.'"); see *SEC v. Ralston Purina Co.*, 346 U.S. 119, 124 (1953) (holding that the Securities Act of 1933 "protect[s] investors by promoting full disclosure of information thought necessary to informed investment decisions").

²³ See, e.g., *Blount v. SEC*, 61 F.3d 938, 944-48 (D.C. Cir. 1995), *cert. denied*, 116 S.Ct. 1351 (1996) (upholding constitutionality of SEC regulations that prohibit municipal finance underwriters from making certain campaign contributions to politicians who award government underwriting contracts).

adopting the new investor advisors Rule 206(4)-5 in 2010.²⁴ The new rule forbids pay-to-play schemes from investment advisers and others who seek business from public pension funds.

The need for SEC anti-pay-to-play Rule 206(4)-5 was evidenced by the scandal of New York Comptroller Hevesi, who pled guilty to the felony charge of defrauding the government.²⁵ Hevesi and his associates engaged in a political kickback scheme involving New York State's pension fund and hundreds of investment firms.²⁶ Due to the New York Comptroller's unique role serving as the fund's sole trustee, giving him ultimate authority over what firms are allowed lucrative contracts to manage the fund's money,²⁷ Hevesi's associates were able to sell access to the state's \$122 billion pension.²⁸ Part of the scheme involved campaign contributions for Hevesi's reelection.²⁹ On April 15, 2011, Hevesi was sentenced to up to four years in jail for his role in the pay-to-play crime.³⁰ This was not just a fraud on the political system; it was also a fraud on the market, which presumed that investment advisers were being picked because of their acumen and skill instead of their political connections.

At the time that the Commission's new anti-pay-to-play rule was announced, Chair Mary Schapiro made the following statement articulating the justification for the rule:

An unspoken, but entrenched and well-understood practice, pay to play can also favor large advisers over smaller competitors, reward political connections rather than management skill, and — as a number of recent enforcement cases have shown — pave the way

²⁴ See Political Contributions by Certain Investment Advisors, 17 Fed. Reg. 41,018 (July 14, 2010) (codified at 17 C.F.R. § 275.206(4)-5).

²⁵ Times Topic Profile: Alan G. Hevesi, http://topics.nytimes.com/top/reference/timestopics/people/h/alan_g_hevesi/index.html.

²⁶ Danny Hakim & Mary Williams Walsh, *In State Pension Inquiry, a Scandal Snowballs*, N.Y. TIMES, Apr. 18, 2009, at A1.

²⁷ Times Topic Profile: Raymond Harding, http://topics.nytimes.com/top/reference/timestopics/people/h/raymond_b_harding/index.html.

²⁸ *Id.*

²⁹ Editorial, *Well, It's a Start*, N.Y. TIMES, June 10, 2011, at A20 ("as we saw in the Hevesi scandal, contributors are eager to trade campaign contributions for a piece of the investment business."); see also Samuel Rubinfeld, *Alan Hevesi Gets Jail Time In Pension Scandal*, WALL ST. J., April 15, 2011 ("He had pleaded guilty in October to one felony count of taking \$1 million in gifts, mostly foreign travel arrangements and campaign contributions, from a California money manager to whom Hevesi steered \$250 million in investments as the sole trustee of the pension fund.")

³⁰ Jose Martinez & Kenneth Lovett, *Disgraced former Controller Alan Hevesi Gets up to 4 Years in Jail for Pension Fund Scandal*, NEW YORK DAILY NEWS, Apr. 15, 2011, http://articles.nydailynews.com/2011-04-15/local/29452968_1_hank-morris-assemblyman-andrew-hevesi-pension-fund.

to outright fraud and corruption.... Pay to play practices are corrupt and corrupting. They run counter to the fiduciary principles by which funds held in trust should be managed. They harm beneficiaries, municipalities and honest advisers. And they breed criminal behavior.³¹

As the Commission recognized, campaign spending could have a distorting impact and it rightly chose to act to safeguard the integrity of the market from this tempting conflict of interest.³²

In comparison to the anti-pay-to-play rule adopted by the Commission in 2010, the potential disclosure rule suggested by the petition filed by 10 law professors in File No. 4-637 is comparatively modest. This petition merely suggests that the SEC require transparency of corporate political spending. But transparency, like the anti-pay-to-play rule, shares the similar goal of ensuring the integrity of the market.

Part IV. The Need for Better Disclosure from the SEC

The Commission needs to act because its sister agencies have failed to provide transparency of corporate money in politics for investors. For example, the Federal Election Commission (FEC) could be the locus for corporate political disclosures, but it is not.³³ The FEC has failed to promulgate any post-*Citizens United* disclosure rules. As FEC Commissioner Weintraub lamented earlier this year:

In previous years, when laws were changed and important cases decided, the Commission [the FEC] was able to respond within a matter of months. Yet here we sit, almost eighteen months after *Citizens United* was announced, mired in gridlock over whether certain aspects of the case may be addressed in the rulemaking, over whether the Commission is willing to hear from the public on a part of the case that my colleagues would prefer to pretend is not there. Regrettably, we cannot even agree on whether certain questions may be posed, let alone reach the stage to consider the substance of any final rule. Disclosure, which I have always

³¹ Mary L. Schapiro, *Speech by SEC Chairman: Opening Statement at the SEC Open Meeting* (June 30, 2010), <http://www.sec.gov/news/speech/2010/spch063010mls.htm>.

³² Press Release, SEC, *SEC Adopts New Measures to Curtail Pay to Play Practices by Investment Advisers* (June 30, 2010), <http://www.sec.gov/news/press/2010/2010-116.htm>.

³³ Ciara Torres-Spelliscy, *Hiding Behind the Tax Code, the Dark Election of 2010 and Why Tax-Exempt Entities Should Be Subject to Robust Federal Campaign Finance Disclosure Laws*, 16 NEXUS CHAPMAN'S J. OF L. & PUB. POL'Y 59 (2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1833484.

considered one of the core missions of the FEC, has become, like the villain in a children's novel, the topic that may not be named.³⁴

That was in June. At this time in November, the FEC still has not acted to clarify what types of disclosures are required of corporate political spenders who were newly empowered to spend in federal elections by the January 2010 *Citizens United* decision. We are likely to see the second anniversary of *Citizens United* come and go without clear disclosure rules from the FEC.

Meanwhile at the state level, there is not a single unified system for reporting money that is spent in state or local elections. States have their own disclosure laws which are regulated by each state's election officials.³⁵ A few states like Minnesota have strong laws capturing the wide range of disclosures that the Supreme Court allows,³⁶ but many states, including large states like New York, have gaping disclosure loopholes which allow corporations to spend in their elections without disclosure.³⁷ If corporations are spending in states with lackluster disclosure laws, then investors have no way of discovering this spending no matter how much due diligence they conduct.³⁸ Furthermore, the duty to disclose to the state under election laws often falls on candidates, political parties, and PACs, not donor corporations.

Another potential source of transparency is the Internal Revenue Service (IRS) which requires public disclosures from certain political organizations.³⁹ IRS disclosure is strong as far as it goes. The IRS requires transparency for 527s, but the IRS is statutorily barred from revealing money flowing through other nonprofits into the political sphere such as 501(c)(4)s and 501(c)(6)s.⁴⁰ The Federal Communications Commission (FCC) is one more potential source

³⁴ Fed. Election Comm'n, *Statement of Commissioner Ellen L. Weintraub on the Draft Notices of Proposed Rulemakings on Independent Expenditures and Electioneering Communications by Corporations and Labor Organizations*, June 17, 2011, <http://fec.gov/members/weintraub/nprm/statement20110617.pdf>.

³⁵ Kristen De Pena, *Ignoring State Disclosure Laws: Campaign Finance Trends* (Sept. 28, 2011), <http://sunshinestandard.org/ignoring-state-%E2%80%9Cdisclosure%E2%80%9D-laws-campaign-finance-trends>.

³⁶ MPR News, *Federal Court Upholds Campaign Disclosure Law* (May 16, 2011), http://minnesota.publicradio.org/collections/special/columns/polinaut/archive/2011/05/federal_court_u.shtml.

³⁷ Ciara Torres-Spelliscy, *Transparent Elections After Citizens United* (Brennan Center 2011), <http://ssrn.com/abstract=1776482>.

³⁸ Linda King, *Indecent Disclosure Public Access to Independent Expenditure Information at the State Level 4* (National Institute on Money in State Politics Aug. 1, 2007), <https://www.policyarchive.org/bitstream/handle/10207/5807/200708011.pdf?sequence=1>.

³⁹ IRS, *Filing Requirements* (Jan. 7, 2011), <http://www.irs.gov/charities/political/article/0,,id=96355,00.html>.

⁴⁰ 26 U.S.C.A. § 501.

of disclosure.⁴¹ In March of 2011, the Media Access Project petitioned the FCC asking for on-ad disclaimers of the sources of broadcast political ads.⁴² So far, the FCC has declined to act on this request.⁴³ However, even if this rule were adopted, this would only cover broadcast ads, leaving other media, like corporate sponsored campaign mailers, without the same transparency.

The SEC is the best situated of any federal agency to attain full disclosure from publicly-traded companies of their political spending.⁴⁴ First, the Commission has clear regulatory authority to require disclosure from reporting companies.⁴⁵ Furthermore, it would be better to capture this spending at the source, instead of vainly attempting to catch it after it has gone out of the corporation and passed through intermediaries, such as opaque trade associations and other nonprofits.⁴⁶ This transparency of corporate political spending will empower the investing public to navigate the new post-*Citizens United* terrain with facts instead of speculation.⁴⁷

⁴¹ Electioneering communications are reported to the FCC. See FCC, *Electioneering Communications Database* (ECD) (2009), <http://gulfoss2.fcc.gov/ecd/>.

⁴² Press Release, Media Access Project, *Media Access Project to FCC: Mandate Disclosure of Political Broadcast Sponsors* (Mar. 22, 2011), <http://www.mediaaccess.org/2011/03/media-access-project-to-fcc-mandate-disclosure-of-political-broadcast-sponsors/>.

⁴³ Press Release, Media Access Project, *Media Access Project Says That FCC Media Report Lacks Meaningful Recommendations* (Jun. 9, 2011), <http://www.mediaaccess.org/2011/06/media-access-project-says-that-fcc-media-report-lacks-meaningful-recommendations/>.

⁴⁴ The SEC should act in part because the average publicly-traded corporation has not agreed to voluntarily disclose. See PAUL DENICOLA, BRUCE F. FREED, STEPHAN C. PASSANTINO, & KARL J. SANDSTROM, *HANDBOOK ON CORPORATE POLITICAL ACTIVITY, EMERGING CORPORATE GOVERNANCE ISSUES 6* (Conference Board 2010) (noting that disclosure by for-profit corporations is still not the norm finding “as of October 2010, seventy-six major American corporations, including half of the S&P 100, had adopted codes of political disclosure. However, a similar shift toward political disclosure has not yet taken place outside of the S&P 100.”); Heidi Welsh & Robin Young, *How Companies Influence Elections - Political Campaign Spending Patterns and Oversight at America’s Largest Companies* 18 (Oct. 14, 2010), <http://ssrn.com/abstract=1692739>. (“Fully 83 percent of the [S&P 500] index does not report on its political spending.”).

⁴⁵ Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a) (prohibiting the solicitation of proxies “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”); see also *Basic Inc. v. Levinson*, 485 U.S. 224, 230 (1988) (“This Court ‘repeatedly has described the “fundamental purpose” of the [Exchange] Act [of 1934] as implementing a “philosophy of full disclosure.”’” (quoting *Santa Fe Indus., Inc. v. Green*, 430 U.S. 462, 477-78 (1977) (quoting *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 186 (1963))))).

⁴⁶ BRUCE F. FREED & JAMIE CARROLL, *HIDDEN RIVERS: HOW TRADE ASSOCIATIONS CONCEAL CORPORATE POLITICAL SPENDING* 1-2 (2006), <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/932>.

⁴⁷ See Comment of Dr. Michael Hadani on SEC petition File No. 4-637.

Part V. Thorough Disclosure is Needed

As an expert in campaign finance laws, I encourage you to conceptualize corporate political spending as broadly as the Supreme Court does. The federal government and state governments have long been able to require disclosures of not only contributions to candidates, political parties and PACs, but also disclosures of money purchasing political ads that expressly advocate the election or defeat of a candidate.⁴⁸ In 2003, the Supreme Court expanded state's disclosure power to cover electioneering communications—broadcast ads which mention a candidate directly before an election and are targeted to that candidate's electorate.⁴⁹ The new rule should cover political contributions, independent expenditures and electioneering communications.

The new SEC rule should cover corporate spending in local, state and federal campaigns so that investors get a fulsome picture of where the company is spending money. While federal races garner the most attention from the press and hold the potential for the most expensive media buys, many companies are focused on narrow regional or even local political fights.⁵⁰ A rule that only covered federal spending would miss the corporate money flowing into state races, including increasingly costly state judicial races.⁵¹

The new Commission disclosure rules should cover not just corporate money for candidate elections, but rather, any item that appears before an American voter on a ballot including ballot initiatives. Ever since the Supreme Court's *Bellotti* case in 1978, corporations have had the right to spend on ballot measures. And they do. For example in a recent Colorado ballot measure election a group called 'Littleton Neighbors Voting No' spent \$170,000 to defeat a zoning restriction that would have prevented a new Wal-Mart. As it turned out 'Littleton Neighbors' was exclusively funded by Wal-Mart, and not a grassroots group.⁵²

The new rule would have a significant loophole in it if it left out contributions from companies to 527s, 501(c)(4)s and 501(c)(6)s. Corporate

⁴⁸ Torres-Spelliscy, *Transparent Elections After Citizens United*, *supra* note 37.

⁴⁹ *McConnell v. Fed. Election Comm'n*, 540 U.S. 93 (2003).

⁵⁰ LIAM ARBETMAN ET AL., *THE LIFE OF THE PARTY: HARD FACTS ON SOFT MONEY IN NEW YORK STATE* 1 (Common Cause/New York 2006), available at http://www.commoncause.org/atf/cf/%7BFB3C17E2-CDD1-4DF6-92BE-BD4429893665%7D/SOFT_MONEY_REPORT.PDF (finding between 1999 and 2006, corporations and other business entities gave over thirty-two million dollars to New York State political parties' Housekeeping Accounts).

⁵¹ Committee for Economic Development, *Partial Justice: The Peril of Judicial Elections*, (2011), http://www.ced.org/images/content/events/moneyinpolitics/2011/38751_partialjustice.pdf; Adam Skaggs, *Buying Justice: The Impact of Citizens United on Judicial Elections* 2 (Brennan Center 2010).

⁵² Def.'s Response Br. to Pls.' Mot. for Summary Judgment, *Sampson v. Coffman*, 06-cv-01858 at 43-44 (D. Co. 2007) (Dkt. #34).

contributions to trade associations and other nonprofit organizations are one way that companies hide their role in politics. As I explained in more detail in a recent law review article, the use of nonprofits thwarts transparency of money from for-profit corporations.⁵³

There should be specificity about which candidate or ballot initiative is being supported by the corporation and in what amount. For example, disclosures should list the candidate supported and the amount spent in favor of that candidate both directly and indirectly through nonprofit intermediaries.⁵⁴ Only a rule that covers all political spending will end the asymmetry of information among managers and investors.

Finally, the information reportable under the rule should be aggregated on the SEC's webpage in a sortable and downloadable format for easy access for the public.⁵⁵ In this respect, we can learn from the experience of the U.K. that it is not enough to have companies merely reporting to their particular shareholders.⁵⁶ For true clarity, the data across companies needs to be accessible in a single repository.

Part VI. Constitutionality of Disclosure Requirements

In the United States, campaign finance reforms typically come on the heels of political scandals, and many of the biggest U.S. political scandals have at their heart a corporate scandal.⁵⁷ Recognizing the state's interest in preventing

⁵³ Torres-Spelliscy, *Hiding Behind the Tax Code*, *supra* note 33; see also Adam Liptak, *A Blockbuster Case Yields an Unexpected Result*, N.Y. TIMES, Sept. 19, 2011, http://www.nytimes.com/2011/09/20/us/disclosure-may-be-real-legacy-of-citizens-united-case.html?_r=1&hp.

⁵⁴ FREED & CARROLL, *supra* note 46 at 1-2.

⁵⁵ Sunlight Foundation Blog, *Bringing Sunlight to Campaign Contributions*, Feb. 2, 2010, ("All information should be online, searchable, sortable, downloadable and machine-readable.").

⁵⁶ Aileen Walker, Parliament and Constitution Centre, House of Commons Library, *The Political Parties, Elections and Referendums Bill –Donations*, 30 (Jan. 7, 2000), <http://www.parliament.uk/commons/lib/research/rp2000/rp00-002.pdf> ("The Companies Act 1967 imposed a duty on companies to declare in the directors' report any political donations above a certain limit. ... There is no central record of such donations...").

⁵⁷ The 1907 Tillman Act followed after the public discovered in 1905 that insurance companies had given vast sums of money to the Republican Party using policy holder money, including for the 1904 re-election of Theodore Roosevelt. See Adam Winkler, *'Other People's Money': Corporations, Agency Costs, and Campaign Finance Law*, 92 GEORGETOWN L. J. 871, 893–94 (June 2004); see also *id.* at 914–15 (one insurance executive involved in the 1905 scandal was charged with grand larceny, but the New York courts threw out the criminal charges). Following the Teapot Dome scandal, a pay-to-play scheme where oil companies gave payoffs to federal officials in exchange for oil leases, the Federal Corrupt Practices Act of 1925 expanded the federal disclosure requirements. 43 Stat. 1070. The Watergate investigations revealed that oil companies among others were giving large, illegal and secretive contributions to Nixon's Committee to Re-Elect the President (CREEP). LAWRENCE M. SALINGER, *ENCYCLOPEDIA OF WHITE-COLLAR AND CORPORATE CRIME*, Vol. 2, 584 (2005); MARSHALL BARRON CLINARD & PETER C. YEAGER, *CORPORATE CRIME* 158–159 (2006) (listing secret political contributions from oil companies

corruption and fraud, the constitutionality of disclosure of money in politics has been repeatedly upheld by the Supreme Court and many lower courts as well.

Starting with *Burroughs v. United States* in 1934, the Supreme Court upheld the reporting requirements imposed by the Federal Corrupt Practices Act of 1925—a response to the Teapot Dome scandal.⁵⁸ In upholding this law, the Court emphasized that disclosure of campaign spending serves crucial anti-corruption interests: the U.S. government “undoubtedly ...possesses every other power essential to preserve the departments and institutions of the general government from impairment or destruction, whether threatened by force or by corruption.”⁵⁹

Over the past four decades, the Supreme Court has recognized a number of state interests in disclosure of money in politics including *Buckley v. Valeo*’s voter information interest, anti-corruption interest, and anti-circumvention interest, *Caperton v. Massey*’s due process interest in judicial elections, as well as *Doe v. Reed*’s interest in ballot measure integrity.⁶⁰

There is language in the *Citizens United* opinion itself, which gives the government the ability to protect shareholders. As Justice Kennedy wrote for the *Citizens United* eight-person majority:⁶¹

Shareholder objections raised through the procedures of corporate democracy . . . can be more effective today because modern technology makes disclosures rapid and informative. . . . With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters. Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits. . . .[D]isclosure permits citizens and

including over \$1 million from Gulf Oil); MICHAEL A. GENOVESE, THE WATERGATE CRISIS 23 (1999) (listing illegal corporate campaign donors); George Lardner Jr., *Watergate Tapes Online: A Listener’s Guide* (2010) (dairy industry as illegal donors).

⁵⁸ 3 Stat. 1070.

⁵⁹ *Burroughs v. United States*, 290 U.S. 534, 545 (1934).

⁶⁰ *Buckley v. Valeo*, 424 U.S. 1 (1976); *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009); *Doe v. Reed*, 130 S. Ct. 2811 (2010). On remand, the district court in *Doe* reaffirmed the state’s interest in disclosure in an as-applied challenge based on alleged risk of harassment. See *Doe v. Reed*, No. C09-5456BHS, slip op. at 33 (D. W. Washington Oct. 17, 2011), <http://electionlawblog.org/wp-content/uploads/doevreed-summary-judgment.pdf> (“The facts before the Court in this case, however, do not rise to the level of demonstrating that a reasonable probability of threats, harassment, or reprisals exists...”).

⁶¹ Eight Justices voted in favor of disclosure and disclaimers in both 2010’s *Citizens United* and in 2003’s *McConnell*.

shareholders to react to the speech of corporate entities in a proper way.⁶²

The language of the *Citizens United* opinion is clear that shareholders have the right to hold corporations accountable for their political spending. But such accountability is impossible unless shareholders know in the first instance which companies are spending in politics and which are not.

Post-*Citizens United*, lower courts have also embraced the constitutionality of disclosure of money in politics. For example, one federal district court noted that after *Citizens United* “[i]n essence, corporations are free to speak, but should do so openly.”⁶³ The Eighth Circuit upheld Minnesota’s disclosure for corporate political expenditures.⁶⁴ And First Circuit upheld both Maine’s and Rhode Island’s disclosure laws.⁶⁵

Meanwhile, in *SpeechNow*, the D.C. Circuit held there were strong governmental interests in requiring disclosure of who had made contributions to independent expenditure political committees, including corporate donors. As the D.C. Circuit wrote:

[T]he public has an interest in knowing who is speaking about a candidate and who is funding that speech, no matter whether the contributions were made towards administrative expenses or independent expenditures. Further, requiring disclosure of such information deters and helps expose violations of other campaign finance restrictions, such as those barring contributions from foreign corporations or individuals.⁶⁶

The Supreme Court denied *SpeechNow*’s petition for certiorari, thereby leaving the D.C. Circuit’s endorsement of disclosure intact.⁶⁷

Moreover, even pre-*Citizens United*, the D.C. Circuit upheld the Commission’s earlier pay-to-play Rule G-37, (a.k.a the Political Contributions and Prohibitions on Municipal Securities Business Rule) that prevented

⁶² *Citizens United v. Fed. Election Comm’n*, 130 S. Ct. 876, 916 (2010).

⁶³ *Yamada v. Kuramoto*, 2010 WL 4603936, at *1 (D. Haw. Oct. 29, 2010).

⁶⁴ *Minnesota Citizens Concerned for Life, Inc. v. Swanson*, No. 10-3126, slip op. at 13 n.4 (8th Cir. May 16, 2011) (“The burden on corporations appears light, and the reporting requirement greatly facilitates the government’s informational interest in monitoring corporate independent expenditures.”). This decision has been vacated pending en banc review by the Eighth Circuit.

⁶⁵ *National Organization for Marriage v. Deluz*, No. 10-2304 slip op. (1st Cir. Aug. 11, 2011) (“As with Maine’s law, the disclosures required by the [Rhode Island] provision here impose no great burden on the exercise of election-related speech. All that is required is the completion of a one-page form, which can be filled out and submitted to the Board online. This relatively small imposition serves [a] recognizedly important government interest...”).

⁶⁶ *SpeechNow.org v. Fed. Election Comm’n*, 599 F.3d 686, 698 (D.C. Cir. 2010).

⁶⁷ *Keating v. Fed. Election Comm’n*, 131 S. Ct. 553 (2010).

brokers and dealers from soliciting or coordinating contributions to officials of any municipal issuer with whom the broker or dealer is engaging or seeking to engage in municipal securities business.⁶⁸ The D.C. Circuit explained political contributions have both positive and negative aspects.

Contributions. . . . may communicate support for a candidate and his ideas, but they may also be used as the cover for what is much like a bribe: a payment that accrues to the private advantage of the official and is intended to induce him to exercise his discretion in the donor's favor, potentially at the expense of the polity he serves.⁶⁹

The D.C. Circuit Court upheld Rule G-37 as constitutional.⁷⁰ It should be noted that Rule G-37 required disclosures.⁷¹ The *Blount* case indicates that the D.C. Circuit supports the SEC's ability to regulate in the anti-pay-to-play area, which is a more expansive regulation than requiring mere disclosure as contemplated by File No 4-637.

Part VII. Disclosure is Good for the Market

At present, there is an agency problem within corporations because shareholders cannot monitor how corporate managers are spending corporate assets on political causes.⁷² One reason that this is troubling is there is not a perfect symmetry between the interests of shareholders and managers vis a vis political spending. As Columbia Professor John Coffee once put it, when it comes to corporate political spending, "managerial and shareholder interests are not well aligned."⁷³

⁶⁸ *Blount v. SEC*, 61 F.3d 938, 940 (D.C. Cir. 1995).

⁶⁹ *Id.* at 942.

⁷⁰ *Id.* at 947.

⁷¹ Municipal Securities Rulemaking Board, *Form G-37* (Feb. 1, 2010), http://www.msrb.org/Rules-and-Interpretations/~/_media/Files/Forms/FormG-37.ashx; SEC Release No. 34-33868 (April 7, 1994) ("rule G-37 will require dealers to disclose to the MSRB on Form G-37 certain information about political contributions, as well as other summary information, to facilitate public scrutiny of political contributions in the context of the municipal securities business of a dealer. Contributions to be reported include those to officials of issuers and political parties of states and political subdivisions made by the dealer, any municipal finance professional, any executive officer, and any PAC controlled by the dealer or by any municipal finance professional. Only contributions over \$250 by municipal finance professionals and executive officers are required to be disclosed.")

⁷² Comment of Dr. Susan Holmberg on SEC Petition File No. 4-637 at 4 (2011) ("In the CPA [corporate political activity] context, there is considerable potential for personal advantages to corporate executives, particularly prestige, a future political career, and star power (Hart 2004) or to help political allies (Aggarwal et al. 2011).").

⁷³ John C. Coffee, Jr., *Testimony Before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services, United States House of Representatives* (Mar. 11, 2010).

In Congressional testimony, Harvard Professor John Coates noted that publicly-traded corporations' use of trade associations for political spending raises corporate governance issues:

Here, the role of nominally general purpose donations to advocacy groups is even more troubling, since for-profit corporations have sought to avoid being linked to direct election activity by turning over large sums with no formal strings attached to these groups. As a result, these groups have been free to diverge even farther from shareholder goals than corporate managers have been able to do directly. In effect, the role of general purpose donations to such advocacy groups has been to double down on the agency problems troubling America's corporate governance system: first, managers diverge from shareholders' interests, and then the chieftains of the advocacy groups diverge even further, all without any information being provided to shareholders, on whose behalf all of this activity is supposedly undertaken.⁷⁴

The Committee for Economic Development (CED) agrees with Professor Coates' assessment of the problem. In a recently released report, CED concluded: "[p]olitical activity also exposes companies to substantial reputational and legal risks that endanger enterprise and shareholder value. These risks are particularly pronounced in the case of contributions made to third party groups where the donor does not exercise control over the ways that funds will be spent."⁷⁵

Another leading business group has also noted that corporate political spending is accompanied by reputational risks. As the Conference Board wrote in a recent report:

Corporate political contributions are subject to a highly complex web of federal, state and local laws and regulations. Failure to comply can lead to costly lawsuits, civil or criminal charges, and consequent damage to a company's image and reputation. Corporate political activities are closely scrutinized by public-interest groups and the media. As a result, a corporation's direct or indirect political spending can put its reputation at risk and could adversely affect its business if the company takes a controversial position or supports a candidate who holds positions

⁷⁴ John Coates, *Statement before the U.S. House of Representatives' Committee on House Administration* 5 (May 11, 2010), http://cha.house.gov/UserFiles/306_testimony.pdf.

⁷⁵ Committee for Economic Development, *After Citizens United: Improving Accountability in Political Finance* 3 (2011), http://www.ced.org/images/content/events/moneyinpolitics/2011/38751_citizensunited.pdf.

that are inconsistent with its corporate values or the views of a significant number of its workers, shareholders or customers.⁷⁶

Transparency is necessary so that investors can properly weigh these risks before investing.

Moreover, there is growing empirical evidence that corporate political spending is bad for firms, endangering shareholder value. For example, economist Dr. Michael Hadani reported to the SEC in his comment to File No. 4-637, after analyzing a 11 year sample of 1110 small-, mid- and large cap S&P firms, “the regression analysis reveals that PAC expenditures and cumulative PAC expenditures have a statistically significant negative affect on firms’ market value, both when examining their year to year PAC expenditures and also when examining their cumulative, 11 years, PAC expenditures.”⁷⁷ His findings are consistent with work from Professor John Coates and Professors Aggarwal, Mischke and Wang.⁷⁸ These empirical findings indicate that investors have more than a prurient interest in knowing the scope of corporate political spending: rather, they have a financial interest in knowing so that they can protect their investments.

This inability of shareholders or the investing public to monitor this political behavior makes it difficult for them to hold managers accountable for this spending. As University of Pennsylvania Professor Jill Fisch suggested six years ago, modification of securities’ disclosure is in order:

It may also be desirable to incorporate political activity into the disclosure requirements applicable to publicly-traded companies under the federal securities laws. In addition to enabling shareholders to monitor the activities of a corporation’s officers and directors, and thereby to police against possible waste or self-dealing, such disclosure would integrate information on political

⁷⁶ The Conference Board Committee on Corporate Political Spending, *Corporate Political Spending, Policies and Practices, Accountability and Disclosure* 7 (2011) (advance copy), <https://www.conference-board.org/retrievefile.cfm?filename=corporate-political-spending-Committee-Report---Advance-Copy.pdf&type=subsite>.

⁷⁷ Comment of Dr. Michael Hadani on SEC File 4-637.

⁷⁸ Michael Hadani, *Institutional Ownership Monitoring and Corporate Political Activity: Governance Implications*, J. OF BUS. RES. (2011); John Coates, *Corporate Governance and Corporate Political Activity: What Effect Will Citizens United Have on Shareholder Wealth?*, Sept. 21, 2010, (working paper) http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1680861; Remarks of John Coates, *Can Shareholders Save Democracy*, Accountability After Citizens United Symposium (Apr. 29, 2011), http://www.brennancenter.org/content/pages/accountability_after_citizens_united; Rajesh Aggarwal, Felix Meschke & Tracy Wang, *Corporate Political Contributions: Investment or Agency?* (June 25, 2010), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=972670 (working paper).

activity with a firm's reporting on the business operations to which the firm's political participation relates.⁷⁹

Increased transparency of corporate political spending would reduce monitoring costs for shareholders and would increase market efficiency.⁸⁰

Ultimately, the opaque environment of corporate political spending is an open invitation for incumbent politicians to try to extract spending from unwilling corporations. While it is true that *Citizens United* only empowered independent spending at the federal level, the temptation by incumbents to coordinate surreptitiously with large spenders may be powerful. We know that this risk is real because of the Watergate experience.⁸¹ Even more recently, during the *McConnell* litigation before the Supreme Court, an ex-CEO declared under oath:

When sitting Members solicit large corporate and union contributions, the leaders of these organizations feel intense pressure to contribute, because experience has taught that the consequences of failing to contribute or failing to contribute enough may be very negative. Business and labor leaders believe based on their experience, that disappointed Members, and their party colleagues, may shun or disfavor them because they have not contributed. Equally, these leaders fear that if they refuse to contribute enough, competing interests who do contribute generously will have an advantage in gaining access to and

⁷⁹ Jill Fisch, *How Do Corporations Play Politics? The Fedex Story*, 58 VANDERBILT L. REV. 1495, 1565 (2005).

⁸⁰ See Comment of Dr. Susan Holmberg on SEC Petition File No. 4-637 at 8 ("The expected benefits of mandatory disclosure of corporate political spending would be substantial. Disclosure would help to mitigate the moral hazard problems inherent in CPA [corporate political activity] by diminishing the monitoring costs for shareholders, allowing them to make more informed investment decisions.").

⁸¹ *Trevor Potter's Keynote Address at Conference Board's Symposium on Corporate Political Spending*, CLC Blog, Oct. 21, 2011, http://www.clcblog.org/index.php?option=com_content&view=article&id=437%3Atrevor-potters-keynote-address-at-conference-boards-symposium-on-corporate-political-spending-10-21-11 ("It is usually forgotten now how many major corporations were found to have violated the law: ITT, American Airlines, Braniff, Ashland Oil, Goodyear Tire & Rubber, Gulf, Philips, Greyhound – those were just a few of the well-known corporations caught up in the Watergate campaign financing scandal: 31 executives ended up being charged with criminal campaign violations, and many plead guilty."); STANLEY I. KUTLER, *THE WARS OF WATERGATE: THE LAST CRISIS OF RICHARD NIXON* 435 (1990) (listing corporations as breaking the campaign finance laws during Nixon's administration including, among others, 3M, Carnation Company and the American Ship Building Company).

influencing key Congressional leader on matters of importance to the company or union.⁸²

This insider account should give us great pause about what may be going on behind closed doors.⁸³ This provides one final reason to require greater transparency: to discourage incumbents from abusing companies who now have the right, but not necessarily the inclination, to spend.⁸⁴

Conclusion

For the foregoing reasons, I strongly encourage the Commission to take up this matter and promulgate new disclosure rules to reveal corporate political spending to the investing public to ensure the integrity of the market.

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As well as publishing law reviews articles on campaign finance disclosure and corporate political spending, Professor Torres-Spelliscy has been published in *The New York Times*, *New York Law Journal*, *U.S. News and World Report*, *Boston Review*, *Roll Call*, *Business Week*, *Forbes*, *Business Ethics Magazine*, *San Francisco Chronicle*, *The Hill*, *Huffington Post*, *Salon.com*, *CNN.com*, and *ABA Judges Journal*. She has also been quoted by the media in *The Economist*,

⁸² Declaration of Gerald Greenwald, *McConnell v. FEC*, No. 02-0582, at 3-4, Sept. 24, 2002, [http://www.campaignlegalcenter.org/attachments/BCRA_MCCAIN_FEINGOLD/McConnell v FEC District Court/708.pdf](http://www.campaignlegalcenter.org/attachments/BCRA_MCCAIN_FEINGOLD/McConnell_v_FEC_District_Court/708.pdf). Mr. Greenwald was the Chairman of United Airlines.

⁸³ Far too often, what goes on behind closed doors is not just unethical; it is illegal. See Corporate Fraud Task Force, *Report to the President*, iii (2008), <http://www.justice.gov/archive/dag/cftf/corporate-fraud2008.pdf> (federal task force reporting to President George W. Bush, "[from] July 2002 [through April 2008], the Department of Justice has obtained nearly 1,300 corporate fraud convictions. These figures include convictions of more than 200 chief executive officers and corporate presidents, more than 120 corporate vice presidents, and more than 50 chief financial officers.").

⁸⁴ *McConnell v. Federal Election Commission*, 540 U.S. 93, 125 n.13 (2003) ("various business leaders attest that corporate soft-money contributions are 'coerced' ... and that '[b]usiness leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties.'").

⁸⁵ Ciara Torres-Spelliscy, *Testimony before the Committee on House Administration* (Feb. 3, 2010), http://www.brennancenter.org/content/resource/ciara_torres-spelliscys_testimony_for_the_committee_on_house_administration/.

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