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Via electronic mail: rule-comments@sec.gov

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

Re: *Petition to Require Public Companies to Disclose Corporate Political Spending, File No. 4-637*

Dear Ms. Murphy:

The Brennan Center for Justice at NYU School of Law[1] respectfully submits these comments on the pending petition to require disclosure of corporate political spending, File No. 4-637 (the "Petition"), to supplement the comment letter submitted on December 21, 2011.[2]

This year's proxy season has seen a large number of shareholder proposals on the topic of transparency about corporate political expenditures. These developments are consistent with a marked trend over the past decade toward both greater investor support for disclosure of political spending and the adoption of more transparent practices by the largest American businesses.

In response to this trend and the SEC's consideration of the Petition, some organizations have voiced opposition to a disclosure rule from the agency.[3] The problems with the legal

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[1] The Brennan Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Brennan Center's Money and Politics project works to reduce the real and perceived influence of special interest money on our democratic values. Project staff defend federal, state, and local campaign finance and disclosure laws in court around the country, and provide legal guidance to campaign finance reformers through counseling, testimony, and public education.

[2] Letter from J. Adam Skaggs, Sr. Counsel, Brennan Center for Justice, to Elizabeth M. Murphy, Secretary, SEC (Dec. 21, 2011), http://www.sec.gov/comments/4-637/4637-20.pdf.

[3] *See, e.g.,* Letter from 60 Plus Association et al., to Elizabeth M. Murphy, Secretary, SEC (Jan. 4, 2013), http://www.sec.gov/comments/4-637/4637-1198.pdf.

arguments presented by opponents of disclosure have been explained by others.[4] This letter provides important factual information regarding the support for disclosure among investors and corporations, as well as the risks linked with corporate political expenditures.

Disclosure is necessary to allow investors to make informed investment decisions and to assess the risks associated with political spending. Transparency also helps to ensure a well-functioning market by shedding light on companies' attempts to secure market advantage through political influence, which can lead to a suboptimal distribution of resources. Transparency makes it more likely that stock prices accurately reflect corporate value. The benefits to investors and the market are compelling reasons for the SEC to adopt a disclosure rule. As detailed below, such a rule is supported by a broad range of investors, in recognition of the harm to shareholder value that political spending has the potential to cause. Moreover, the voluntarily disclosure policies adopted by an ever-increasing number of companies show that transparency in this area is feasible and will not silence political advocacy by corporations.

Disclosure of corporate political activity has broad support among investors.

A broad range of investors have called for corporate political spending to be disclosed, contrary to opponents' claims that support is limited to a minority of "special interest" shareholders.[5] The Petition now has an astonishing number of comments, over 600,000—virtually all of which are in support of disclosure. Investors are a critical part of this enormous outpouring of support. The SEC has received comments calling for disclosure from a group of forty mutual fund and institutional asset managers that together manage more than $690 billion,[6] from five state treasurers,[7] and from the Maryland State Retirement Agency,[8] along with other investors.[9]

Last year, an open letter to S&P 500 companies asking them to disclose their political spending was signed by investors representing more than $300 billion in assets under

[4] *See* Letter from J. Gerald Hebert, Exec. Dir., Campaign Legal Center, et al., to Elizabeth M. Murphy, Secretary, SEC (Mar. 7, 2013), http://www.sec.gov/comments/4-637/4637-1585.pdf.

[5] *See* Letter from 60 Plus Association et al., to Elizabeth M. Murphy, Secretary, SEC (Jan. 4, 2013), at 3-6, http://www.sec.gov/comments/4-637/4637-1198.pdf.

[6] Letter from Iain Richards, Regional Head of Corporate Governance, Aviva Investors, et al., to Elizabeth M. Murphy, Secretary, SEC (Nov. 1, 2011), http://www.sec.gov/comments/4-637/4637-11.pdf.

[7] Letter from Janet Cowell, North Carolina State Treasurer, et al., to Elizabeth M. Murphy, Secretary, SEC (Jan. 19, 2012), http://www.sec.gov/comments/4-637/4637-84.pdf; Letter from Ted Wheeler, Oregon State Treasurer, to Elizabeth Murphy, Secretary, SEC (Oct. 6, 2011), http://www.sec.gov/comments/4-637/4637-14.pdf.

[8] Letter from R. Dean Kenderdine, Exec. Dir., Maryland State Retirement & Pension System, to Elizabeth M. Murphy, Secretary, SEC (Oct. 14, 2011), www.sec.gov/comments/4-637/4637-10.pdf.

[9] *See, e.g.,* Letter from Benjamin Lovell, President, Zevin Asset Management, to Elizabeth M. Murphy, Secretary, SEC (May 17, 2013), http://www.sec.gov/comments/4-637/4637-1791.pdf; Letter from Ben Chute, Member, Advisory Comm. on Socially Responsible Investing, Middlebury College, to Elizabeth M. Murphy, Secretary, SEC (May 7, 2013), http://www.sec.gov/comments/4-637/4637-1708.pdf.

management.[10] This effort is supported by the Council of Institutional Investors, an association of pension funds, endowments, and foundations with combined assets of over $3 trillion.

In the 2012 proxy season, proposals regarding political spending were more common than any other type of proposal.[11] Of the companies in the S&P 100 that have not already voluntarily adopted disclosure policies, 45 percent included proposals on political issues in their proxy statements.[12] Several disclosure proposals have achieved votes of over 40 percent in recent years, including this year's 66 percent vote in favor of disclosure at CF Industries, an Illinois fertilizer company.[13] The average proxy season vote in favor of shareholder resolutions for political disclosure and accountability this year has been almost 32 percent.[14]

Focusing on large institutional investors, there was significant support from mutual funds in last year's proxy season. Forty of the largest mutual fund families supported disclosure resolutions 34 percent of the time, on average.[15] Five of these fund families supported disclosure more than 80 percent of the time. Although opponents of the Petition have claimed that institutional investors do not support disclosure, some mutual funds have publicly rejected the implication that they are opposed to disclosure policies.[16] Vanguard has distinguished between disclosure by an individual company and a uniform SEC rule requiring disclosure, saying it has no position on the latter, and Fidelity pointed out that its abstentions on disclosure proposals should not be construed as *de facto* votes against disclosure.

In addition to proxy votes, some large institutional investors exhibit support for disclosure in their policies on corporate governance. For example, TIAA-CREF, which manages over

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10 *See, e.g.,* Letter from Bruce F. Freed, Exec. Dir., Center for Political Accountability, et al., to Ronald Robins, Jr., Sr. Vice Pres., Abercrombie & Fitch Co. (Sept. 27, 2012), http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/6936.

11 Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923, 938 (2013).

12 *Id.* at 939.

13 Dina ElBoghdady, *Shareholders Press Companies to Disclose More About Political Spending*, WASH. POST., May 17, 2013, http://articles.washingtonpost.com/2013-05-17/business/39335887_1_political-spending-sustainable-investments-institute-bruce-freed; Letter from Heidi Welsh, Exec. Dir., Sustainable Investments Institute, to Elizabeth M. Murphy, Secretary, SEC, Oct. 30, 2012, http://www.sec.gov/comments/4-637/4637-1149.pdf ("Twenty votes at 14 companies since 2010 have been above 40 percent and two have earned a majority of shares cast for and against, at Sprint Nextel in 2011 and WellCare Health Plans in 2012.").

14 CTR. FOR POLITICAL ACCOUNTABILITY NEWSLETTER, June 2012, http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/7933.

15 CTR. FOR POLITICAL ACCOUNTABILITY, CORPORATE POLITICAL SPENDING AND THE MUTUAL FUND VOTE: 2012 PROXY SEASON ANALYSIS (2012), http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/7380.

16 Ian Salisbury, *Why Fidelity and Vanguard Are Afraid of Politics*, WALL ST. J. MARKETWATCH, May 16, 2013, http://www.marketwatch.com/story/funds-could-hold-swing-vote-on-political-spending-2013-05-16.

$500 billion in assets, recommends that companies disclose corporate political spending, noting the potential risk to shareholders.[17]

A lack of disclosure is risky for investors.

Corporate political spending involves risk, from the possibility that an opposed candidate will win the election to the risk that a contribution will generate bad publicity.[18] As a general matter, there is evidence that political activity correlates negatively with shareholder value.[19] Of course, there is nothing inherently wrong with businesses taking risks, but shareholders need to know about risky behavior in order to make well-informed investment decisions.

A report by Robert Shapiro and Douglas Dowson claims to find methodological problems with studies concluding that corporate political activity harms shareholder value.[20] Harvard Professor John Coates, the author of two of the three studies criticized, has responded by pointing out that Shapiro and Dawson's review of the literature is selective and biased and arguing that their methodological critiques of his work reveal basic misunderstandings of techniques common in the field as well as factual misstatements.[21]

Furthermore, the Shapiro and Douglas report does not address various other studies finding evidence of harm to value from political activity—some released this year. Researchers have found that politically connected firms have lower value,[22] show worse financial performance, and are more likely to get government bailouts.[23] One study examining almost a thousand S&P 1500 firms for 10 years found that political spending was negatively associated with market performance and that cumulative political expenditures make both market and accounting performance worse.[24]

[17] TIAA-CREF POLICY STATEMENT ON CORPORATE GOVERNANCE 16 (2011), https://www.tiaa-cref.org/public/pdf/pubs/pdf/governance_policy.pdf.

[18] *See* Brody Mullins & Ann Zimmerman, *Target Discovers Downside to Political Contributions*, WALL ST. J., Aug. 7, 2010, at A2, http://online.wsj.com/article/SB10001424052748703988304575413650676561696.html.

[19] John C. Coates IV, *Corporate Politics, Governance and Value Before and After* Citizens United, 9 J. EMPIRICAL LEGAL STUD. 657 (2012).

[20] ROBERT J. SHAPIRO & DOUGLAS DOWSON, CORPORATE POLITICAL SPENDING: WHY THE NEW CRITICS ARE WRONG (2012), http://www.manhattan-institute.org/pdf/lpr_15.pdf.

[21] John Coates, *Update on Corporate Political Activity*, HARVARD LAW SCHOOL FORUM ON CORPORATE GOVERNANCE AND FINANCIAL REGULATION, July 3, 2012, http://blogs.law.harvard.edu/corpgov/2012/07/03/update-on-corporate-political-activity.

[22] *See, e.g.,* Ashley N. Newton & Vahap B. Uysal, *The Impact of Political Connectedness on Cash Holdings: Evidence from* Citizens United (unpublished paper, revised 2013), https://www.ou.edu/content/dam/price/Finance/CFS/paper/pdf/NewtonPaper.pdf.

[23] Mara Faccio, Ronald W. Masulis & John J. McConnell, *Political Connections and Corporate Bailouts*, 61 J. FIN. 2597 (2006).

[24] Michael Hadani & Douglas A. Schuler, *In Search of El Dorado: The Elusive Financial Returns on Corporate Political Investments*, 34 STRATEGIC MGMT. J. 165 (2013).

Many companies are adopting disclosure policies.

The past decade has seen more and more companies adopt conscientious policies governing political spending each year. In 2012, shareholder resolutions concerning political disclosure and accountability led to 13 agreements by companies.[25] This year, several Fortune 500 companies reached an agreement with New York State Comptroller Tom DiNapoli to disclose political spending, joining a list that includes Kroger, PepsiCo, and Safeway.[26] A total of 16 companies have adopted new political disclosure and accountability policies so far in 2013.[27]

A 2012 Deloitte survey of a broad array of companies found that 60 percent of respondents' companies disclose political contributions.[28] For large market capitalization firms, the rate was even higher, at 78 percent.[29] The CPA-Zicklin Index reveals that many of the top 200 companies in the S&P 500 voluntarily disclose more than is required by law. Seventy companies disclose payments to trade associations, which may in turn make political expenditures, and 32 disclose payments to politically active tax-exempt organizations.[30] There has been a clear trend toward voluntary disclosure among the largest American companies over the last decade, showing that it is entirely feasible for businesses to accommodate shareholders' calls for information about political spending.[31]

Disclosure is the true goal.

Responsible investors recognize that their investment decisions must be well-informed, and shareholders have an interest in knowing what their money is being spent on. Since political spending entails risk to the bottom line, investors benefit from having information about it. Disclosure of political expenditures benefits investors and the efficient operation of the market; it is not a partisan issue.

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[25] CTR. FOR POLITICAL ACCOUNTABILITY NEWSLETTER, June 2012, http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/6785.

[26] Robert Harding, *DiNapoli: Agreement Reached with Five Fortune 500 Companies to Disclose Political Spending*, AUBURN CITIZEN, Apr. 9, 2013, http://auburnpub.com/blogs/eye_on_ny/dinapoli-agreement-reached-with-five-fortune-companies-to-disclose-political/article_9d291fde-a147-11e2-a3ce-0019bb2963f4.html.

[27] CTR. FOR POLITICAL ACCOUNTABILITY, SHAREHOLDER RESOLUTIONS ON CORPORATE POLITICAL SPENDING DISCLOSURE & ACCOUNTABILITY (2013), http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/7790.

[28] DELOITTE CTR. FOR CORPORATE GOVERNANCE & SOCIETY OF CORPORATE SECRETARIES AND GOVERNANCE PROFESSIONALS, 2012 BOARD PRACTICES REPORT: PROVIDING INSIGHT INTO THE SHAPE OF THINGS TO COME 24 (2012), http://www.corpgov.deloitte.com/binary/com.epicentric.contentmanagement.servlet.ContentDeliveryServlet/USEng/Documents/Board%20Governance/Tablet_Deloitte%20Board%20Practices%20Report%202012.pdf.

[29] *Id.* at 79.

[30] CTR. FOR POLITICAL ACCOUNTABILITY, THE 2012 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL ACCOUNTABILITY AND DISCLOSURE: HOW LEADING COMPANIES NAVIGATE POLITICAL SPENDING IN THE WAKE OF *CITIZENS UNITED* 13-14 (2012), http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/6903.

[31] Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923, 946 (2013).

The Petition's opponents warn that disclosure of political spending will be used to harass companies into ending their political activity.[32] Although there are some who oppose corporate political spending altogether, that fact does not impugn the sincerity of advocates' desire for disclosure as a means of investor protection. And the notion that disclosure will eliminate the ability of business to participate in policy advocacy is belied by the actual history of political spending disclosure. In addition to a long history of making the disclosures required by law, many of America's most successful companies have been voluntarily disclosing political expenditures for years—without being forced to give up their spending. In fact, a new poll of business leaders shows powerful support for disclosure: 90 percent support disclosing "all individual, corporate, [and] labor contributions to political committees or other organizations that spend money in election campaigns," and 68 percent strongly support such a reform.[33]

As the Supreme Court pointed out when it upheld a federal law requiring disclosure of political spending in *Citizens United v. FEC*, disclosure allows shareholders to "determine whether their corporation's political speech advances the corporation's interest in making profits."[34] Companies that believe their political spending benefits their bottom lines should not oppose disclosure of that spending. If the activity is beneficial to corporate value, publicizing it will only attract investors who agree with the strategy.

The trends of recent years have shown that investor support for information about corporate political spending is high, and the country's biggest companies are moving to adopt disclosure and accountability policies in ever greater numbers. The best corporate governance requires well-informed shareholders. A company's decision to engage in political spending should be made transparently and with shareholder value in mind, which is why disclosure policies are good for investors, companies, and the market.

Respectfully submitted,

Vandewalker

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[32] *See* Letter from 60 Plus Association et al., to Elizabeth M. Murphy, Secretary, SEC (Jan. 4, 2013), at 18-19, http://www.sec.gov/comments/4-637/4637-1198.pdf.

[33] Hart Research Associates & American Viewpoint, American Business Leaders on Campaign Finance and Reform 13-14 (2013), http://www.ced.org/pdf/Campaign_Finance%2C_Hart_and_AmView.pdf. The poll found that this support is bipartisan: 95 percent of Democrats and 88 percent of Republicans are in favor.

[34] 558 U.S. 310, 370 (2010).