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Via Email and U.S. Mail

January 17, 2012

Ms. Elizabeth Murphy  
Secretary  
U.S. Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549-1090

*Re: File Number 4-637, petition to require public companies to disclose to shareholders the use of corporate resources for political activities.*

Dear Ms. Murphy:

I am writing on my own behalf as one with six decades of experience in the field of investment management, including nine years as chief executive of Wellington Management Company, followed by 26 years as chief executive and then senior chairman of The Vanguard Group, the mutual fund company that I founded in 1974. My experience involves virtually every aspect of institutional money management, including (especially relevant in this case) establishing proxy voting policies.

I do not presume to speak on behalf of the present management of Vanguard, nor have I done so in the nine books I have written focused on mutual funds, investment policy, proxy voting issues, and fiduciary duty. I'm taking the liberty of attaching to this letter the relevant parts of chapters 3 and 6 from my 2005 book *The Battle for the Soul of Capitalism* to provide an example of my strong view that institutional investors should honor both the rights and responsibilities of corporate governance. (Attachment A)

Now let me turn to the Commission's proposal for rulemaking on corporate political spending. First, I endorse without reservation the petition for corporate disclosure of political contributions presented by the Committee on Disclosure of Corporate Political Spending, dated August 3, 2011. I am sure that the Commission has noted the high academic standing of its signatories, but I would add that their probity and independence should give their proposal a powerful influence on the Commission's thinking. These are not extremists of either the right or the left; they are intelligent, experienced, and respected academics who seek to further the best interests of our financial system and our society.

Second, I urge the Commission to stand back for a moment from the issue of full disclosure of corporate contributions to decide whether corporate shareholders should not first decide whether a corporation should make any political contribution whatsoever without the approval of its shareholders. Indeed, this seems to be the opinion of Justice Anthony Kennedy, speaking for the majority in *Citizens United*, when he writes, “Shareholders can determine whether their corporation’s political speech advances the corporation’s interest in making profits, and citizens can see whether elected officials are ‘in the pocket’ of so-called moneyed interests . . . The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way.”

## Background

In January 2010, the U.S. Supreme Court ruled that laws limiting corporate political contributions were a violation of constitutional free speech principles. In its decision in the *Citizens United* case, the court overturned decades of its own precedents, and gave corporations the same First Amendment rights as individual citizens. “The First Amendment confirms the freedom to think for ourselves,” wrote Justice Kennedy in his 5-4 majority opinion, which unleashed a flood of corporate spending on ads for and against political candidates.

But public companies aren’t people. As Justice John Paul Stevens, writing for the minority, observed, the court committed a grave error in treating corporate speech the same as that of human beings. The notion that the same freedoms should apply when a public company, often with tens of thousands of owners, speaks in matters beyond the scope of its business affairs offends common sense.

We can justifiably suppose that the individuals holding shares in these giant corporations hold a broad spectrum of opinions, and corporate political contributors can hardly honor them all. Past experience also suggests that corporate managers are likely to try to shape government policy in a way that serves their own interests over the interest of their shareholders. (For example, corporate managers have opposed most attempts to limit executive compensation.)

Common sense and experience also suggest that, given the enormous revenues of today’s giant corporations, these firms will make their political contributions generously. It’s been estimated that \$293 million was spent during the 2010 election cycle by groups that can accept unlimited contributions from corporations, trade associations, and unions.<sup>1</sup> (Disclosure *might* help allay this somewhat.) The tenet that “nothing seems expensive when you can pay for it with other people’s money” comes to mind.

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<sup>1</sup> According to the Center for Responsive Politics as reported by UPI in the article “Under the U.S. Supreme Court: Unveiling secret corporate political money” published 11/13/2011.

## **My Proposal**

For those who share my concerns, the Petition for Rulemaking by the Committee on Disclosure is a start. Transparency in corporate political spending is in the best interests of investors, companies, and the general public, so I urge the SEC to take favorable action on this petition. However, such a rule doesn't go far enough. Concerned investors should have an explicit right to submit a resolution such as the one below for inclusion in the next proxy statement for each corporation in which they've invested:

**RESOLVED: that the corporation shall make no political contributions without the approval of the holders of at least 75% of its shares outstanding.**

I recommend a supermajority requirement because of the inevitably wide range of views in any shareholder base. As it happens, 75% is halfway between a simple majority and the standard (under earlier Delaware corporate law) requiring a unanimous shareholder vote to ratify a gift of corporate assets (arguably, precisely what a political contribution is).

Such a check on unfettered political contributions is essential now that our corporations are no longer controlled by "persons" (i.e., individual shareholders). Some 70% of the shares of our large publicly held corporations are held by "agents"—the institutional investors who manage our mutual funds, pension funds, insurance and trust companies, and endowment funds.

## **Discussion**

These institutional investor/agents—who together hold working control of virtually every publicly-held company in corporate America—have all too often failed to honor their responsibilities of corporate stewardship, and they actively vote their proxies far too rarely, normally endorsing management proposals by overwhelming majorities. With but a handful of exceptions, the participation of our institutional money managers in corporate governance has been limited, reluctant, and unenthusiastic. The record, as far as I know, is bereft of a single proxy proposal submitted by a mutual fund or pension fund investor in opposition to a corporation's management. The temptation for agents to take advantage of their agency position for their own benefit is simply too great to resist. Large institutional investors, for instance, routinely manage the retirement plans and thrift plan portfolios of the very corporations whose shares they own. As the saying goes: "There are only two types of clients we do not want to offend: actual and potential."

To make matters worse, most of our large institutional money managers are themselves owned by giant U.S. and global financial conglomerates. The shares of those conglomerates, in turn, are held in their own portfolios, a sort of circular ownership riddled with conflicts. So before they take a stand against political contributions by the companies whose shares are held in their portfolios, these conglomerates would have to at least consider a public pledge that they would forswear political contributions of their own. I don't expect this tangled web to be easily unraveled, but the commission ought to try.

The outcome of these efforts to rein in corporate political contributions will be a powerful indication of whether or not our money management agents are putting the interest of their principals before their own, and whether or not our government regulators are willing to impose meaningful reforms that will increase transparency and limit the undue influence corporate executives—agents, to be clear, of their shareholder principals—have over our elected officials. It's time to stand up to the Supreme Court's misguided decision; to bring democracy to corporate governance; to recognize the interlocking interests of our corporate and financial systems; and take that first step along the road to reducing the dominant role that big money plays in our political system.

And so I urge the Commission to take that first step by allowing the shareholders to decide whether they want their corporations to use corporate assets for political purposes. If they decide "yes," then the disclosure rules would come into effect. If they decide "no," then such rules become moot, and are unnecessary.

Thank you for taking the time to consider my opinions and my proposal.

Sincerely,

John C. Bogle

JCB/sjh

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Bogle, John C. "Chapters 3 and 6." *The Battle for the Soul of Capitalism*. New Haven: Yale University Press, 2005. Print.