

American Federation of Labor and Congress of Industrial Organizations



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January 18, 2012

By email: rule-comments@sec.gov

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

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

Dear Ms. Murphy,

I write on behalf of the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") in support of the Committee on Disclosure of Corporate Political Spending ("Committee") Petition for Rulemaking ("Petition").¹ The Petition asks the Securities and Exchange Commission ("Commission") to develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities.

The AFL-CIO is America's largest labor federation, comprised of 57 national and international labor organizations and representing over 12.2 million members. Union-sponsored pension and employee benefit plans hold more than \$480 billion in assets. Union members also participate in the capital markets as individual investors and as participants in pension plans sponsored by corporate and public sector employers. The retirement savings of America's working families depend in part on corporate accountability to shareholders, and increasing that accountability is at the core of the Committee's Petition.

¹ Available at <http://sec.gov/rules/petitions/2011/petn4-637.pdf>

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Shareholders need disclosure of corporate political spending

Under the federal Labor-Management Reporting and Disclosure Act,² the AFL-CIO and its affiliated unions, as well as thousands of their state and local affiliates, must annually itemize in reports accessible on the Internet all of their political (and other) spending, however defined, to any recipient of that spending that aggregates to at least \$5,000. There is no corollary disclosure requirement for public or privately held corporations, or any other business entity. Instead, federal, state and local campaign finance laws that generally apply to unions and businesses alike periodically require some public disclosure of particular categories of political spending. Federal and state lobbying laws also require some measure of public disclosure concerning corporate and union spending on lobbying.

No law requires corporations to disclose to their shareholders whether corporate funds have been spent in connection with candidate elections, ballot measures or direct or grassroots lobbying, or donated to other organizations that use those funds for any of those purposes, even though much of that spending is beyond the scope of all existing public disclosure laws. Yet the nature and amounts of such spending are of critical importance to shareholders and corporate accountability in general.

Consequently, in recent years the AFL-CIO and many other investors have filed shareholder proposals asking public companies to disclose their spending on political activities. These proposals cite the need for accountability to shareholders, compliance with the law and the reputational risks to companies arising from unreported corporate political expenditures. The proposals describe a long history of compliance problems and controversies involving corporate political spending. The proposals also describe the reputational risks associated with political contributions.

When companies have sought to exclude these shareholder proposals from their proxy statements, Commission Staff have disagreed.³ What began as an effort on the part of a few shareholders has become a leading shareholder proposal, with support

² Labor-Management Reporting and Disclosure Act of 1959, As Amended, 29 U.S.C. 401, *et seq.*

³ *See*, for example, *The Home Depot, Inc.*, SEC No-Action Letter, 2011 SEC No-Act. LEXIS 333 (Mar. 25, 2011).

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from the Conference Board and the Council of Institutional Investors.⁴ In 2011, a quarter of the companies on the Standard & Poor's index of 100 large corporations received shareholder proposals seeking more disclosure of political spending in their proxy statements. In fact, more than half of large public companies now voluntarily disclose their political spending to some degree.⁵ For instance, Microsoft maintains an annual list of its political and other advocacy spending on its website, including donations to Internal Revenue Code ("IRC") Section 501(c)(4) groups and Section 501(c)(6) business organizations that spend on politics.⁶

When companies fail to disclose their political spending, there is loss of accountability and an inherent risk to shareholders. Senior management and directors may allow their personal political preferences to motivate and influence decisions on corporate political spending, with inadequate regard for their obligations to shareholders and the company's own success. Absent disclosure, such behavior can occur without restraint or accountability. For example, the Target Corporation financed a group that was advertising in support of a candidate who explicitly opposed granting civil rights to gay and lesbian citizens. Threats of a consumer boycott and public demonstrations soon threatened to harm Target's brand name.⁷

Moreover, shareholders who, on their own, attempt to discover the details of a company's political spending are at an inherent disadvantage. There is no single source to which they can turn to learn of all corporate political spending decisions. Even if shareholders had the time and the resources to track down all of the available federal and state reports on corporate political spending, they would still lack a complete picture, because much corporate political spending is effectuated via donations to IRC

⁴ The Council of Institutional Investors, Corporate Governance Policies, Section 2.14, available at <http://www.cii.org/policies>; The Conference Board, "Handbook on Corporate Political Activity," (Report R-1472-10-RR)"(2010), available at <http://www.conference-board.org/retrievefile.cfm?filename=TCB%20Handbook%20on%20Corporate%20Political%20Activity.pdf&type=subsite>.

⁵ Center for Political Accountability, "The CPA Zicklin Index of Corporate Political Accountability and Disclosure," Washington, DC, October 28, 2011, p.5

⁶ Microsoft Corporation, Microsoft 2011 Citizenship Report, available at <http://www.microsoft.com/about/corporatecitizenship/en-us/reporting/working-responsibly/integrity-governance/public-policy/>.

⁷ Brody Mullins & Ann Zimmerman, *Target Discovers Downside to Political Contributions*, WALL ST. J., Aug. 7-8, 2010, at A2.

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Section 501(c)(6) trade associations and Section 501(c)(4) groups, which may lawfully and usually do refrain from publicly disclosing the identities of their donors and member companies.

Citizens United and the need for prompt disclosure

The Supreme Court's decision in *Citizens United v. FEC*, 130 S. Ct. 876 (2010), which eliminated restrictions on independent expenditures by corporations in political campaigns, only heightens the need for the Commission to protect investors by requiring disclosure of corporate political spending, as this decision has predictably fostered an increase in corporate political spending⁸ and there is every reason to expect that such spending will continue to increase.

In that same decision, the Court upheld several provisions of the Federal Election Campaign Act that require public disclosure of certain categories of electoral communications. In doing so, the Court explicitly recognized the critical role of shareholders in monitoring corporate political spending, and the Commission should embrace its rationale in acting on the Petition: "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."⁹

Prompt disclosure, however, is far from the present standard for corporate political spending. Despite the progress made to date as a result of shareholder proposals, most public companies report nothing about this spending to their shareholders. And, many of the companies that do disclose reveal only direct contributions by the company's political action committee to candidates for office. Corporate donations to Section 501(c)(4) and (c)(6) entities are virtually entirely undisclosed, yet those organizations can and do engage in extensive, undisclosed partisan political, lobbying and public policy advocacy activities. Consequently, shareholders have no way to discover how a company's political spending is conducted, to which candidates, organizations and causes it is given, or whether that spending is in the best interests of the shareholders.

⁸ Center for Responsive Politics, "Influx of Corporate Political Cash Followed Pivotal Federal Court Decision," available at <http://www.opensecrets.org/news/2011/03/influx-of-corporate-political-cash.html>

⁹ 130 S. Ct. 876, 916 (2010).

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The absence of a uniform and comprehensive disclosure requirement may mislead shareholders about their companies' political expenditures. For example, WellPoint's shareholders were not told about the company's contributions to an \$86 million U.S. Chamber of Commerce advertising campaign to defeat President Obama's health care reform plan.¹⁰ WellPoint's "Political Accountability and Related Contributions Report 2010," merely lists the company's annual U.S. Chamber of Commerce dues payments of \$250,000 and the portion of those dues that the U.S. Chamber of Commerce allocated to lobbying.¹¹ It contains no mention of WellPoint's political expenditures allocated to the U.S. Chamber of Commerce's campaign to defeat the President's health care reform legislation.

In addition, many corporate directors support a rule mandating disclosure. 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."¹² Such a disclosure requirement will augment the ability of boards of directors to oversee corporate political spending.

Scope of disclosure

A key area of inquiry for Commission rulemaking is the appropriate scope of corporate disclosure to shareholders regarding political and advocacy spending. Shareholders need a complete picture of political spending by public companies. In addition to what is commonly subject to other public reporting, mainly spending by registered federal and state political action committees, the Commission should consider requiring that public companies report their voluntary donations to other entities that engage in political and lobbying activities under IRC Sections

¹⁰ New York Times, "Top Corporations Aid U.S. Chamber of Commerce," October 21, 2010; National Journal, "Health Insurers Funded Chamber Attack Ads," January 12, 2010; WellPoint, Inc., 2009 Definitive Proxy Statement, p. 40.

¹¹ WellPoint, Inc., "2010 Political Contributions and Related Activity Report," available at <http://www.wellpoint.com/AboutWellPoint/GovernmentRelations/PoliticalContributions/index.htm>

¹² The Conference Board, "Political Money: The Need for Director Oversight," Executive Action Series No. 263, April 2008, available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/1433>.

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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.

The Commission also should consider requiring companies to report their grassroots and direct lobbying spending, whether or not they are subject to disclosure under federal or state lobbying laws. Finally, the Commission should consider requiring company reporting of all other payments to other entities and individuals that are earmarked for any of these purposes. It is the AFL-CIO’s view that all such requirements would be appropriate, and that the Commission could identify a reasonable threshold of spending for such disclosures – a threshold that should be no higher than that which unions must comply with in publicly disclosing *all* of their spending.

Conclusion

The Securities and Exchange Commission is the nation’s advocate for investors. It must act promptly to assist investors with what is now a confusing array of limited and incomplete political expenditure reporting by public companies. The risks to investors are significant and the need for action is at hand. Accordingly, we urge the Commission to accept the Petition and initiate the requested rulemaking at its earliest opportunity.

Sincerely,

A handwritten signature in black ink, appearing to read "D. F. Pedrotty", written in a cursive style.

Daniel Pedrotty
Director, Office of Investment

DFP/sdw
opeiu #2, afl-cio