

July 16, 2012

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



Dear Ms. Murphy,

We write to follow up to our letter of January 6, 2012, encouraging the Securities and Exchange Commission (SEC) to adopt a new rule in response to a Petition for Rulemaking (File No. 4-637) that would require disclosure of corporate political spending above a *de minimis* threshold. Recent revelations of efforts by companies to illicitly influence the 2012 elections highlight the importance of greater corporate transparency and the need for the SEC to issue regulations requiring greater disclosure of political expenditures by corporations.

The Supreme Court's 2010 decision in *Citizens United v. FEC* dramatically changed campaign finance and invalidated on constitutional grounds numerous rules regarding political spending.<sup>1</sup> As a result, corporations now enjoy the freedom to spend general treasury funds on independent expenditures and electioneering communications. Since the decision issued, corporate political spending has increased every fiscal quarter.<sup>2</sup> In response to this kind of spending, both corporate shareholders and members of the public are calling on corporations to disclose their political expenditures.

At the same time, *Citizens United* upheld a number of disclosure requirements and envisioned increased transparency in order to ensure corporate accountability and good governance.<sup>3</sup> The Court explained that "prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions."<sup>4</sup> The expectation of the Supreme Court that more liberal disclosure would result has, however, been unmet.

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<sup>1</sup> See *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

<sup>2</sup> Christopher P. Skroupa, *Investors Want Disclosure of Corporate Political Contributions and Lobbying Expenditures*, *Forbes*, Apr. 20, 2012, <http://www.forbes.com/sites/christopherskroupa/2012/04/20/investors-want-disclosure-of-corporate-political-contributions-and-lobbying-expenditures-2/>.

<sup>3</sup> The Committee on Disclosure of Corporate Political Spending, *Petition for Rulemaking 8 (2011)* available at <http://blogs.law.harvard.edu/corpgov/files/2011/08/SEC-Petition.pdf>.

<sup>4</sup> *Citizens United*, 130 S. Ct. at 916.

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As corporations have increased their political spending, shareholder demands for disclosure of this spending have followed. In a 2006 survey, 87% of shareholders said they would have more confidence in investing in a corporation that had adopted rules providing for transparency and oversight in political spending.<sup>5</sup> A majority of those surveyed said current regulations do not provide sufficient accountability of political spending.<sup>6</sup> In 2011, 25 companies in the S&P 100 saw shareholder resolutions for greater political disclosure on their proxy statements.<sup>7</sup> Twenty of these companies received a proposal for increased disclosure from an institutional investor.<sup>8</sup> In the current proxy season, support for greater disclosure is again high among shareholders at many major corporations, including WellPoint, CVS Caremark, Windstream and CenturyLink, Inc.<sup>9</sup> Furthermore, institutional investors plan to propose disclosure rules at several important corporations in 2012, including IBM, Boeing, Bank of America and Home Depot.<sup>10</sup> Shareholder interest in political expenditures has increased so significantly that many corporations have voluntarily adopted policies requiring disclosure of political spending.<sup>11</sup> This trend likely will heighten shareholder expectations, increasing the need for all corporations to disclose their political spending if they wish to maintain widespread support from individual and institutional investors.

In addition to shareholders, the public has also joined the fight for greater transparency. With the ability to boycott products and shape company reputations, the public plays an important role in the continued viability of many corporations. Recently, Target was subject to a boycott by citizens concerned about the company's secretive support of an organization that ran ads for an anti-gay-rights gubernatorial candidate in Minnesota.<sup>12</sup> So far in 2012, protestors

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<sup>5</sup> Center for Political Accountability, "Corporate Political Spending: A Survey of American Shareholders," Mason-Dixon Polling & Research (2006), available at: <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918>.

<sup>6</sup> *Id.*

<sup>7</sup> The Committee on Disclosure of Corporate Political Spending, *supra* note 3 at 5.

<sup>8</sup> *Id.*

<sup>9</sup> Press Release, Center for Political Accountability, Strong Shareholder Support for CPA Model Political Disclosure Resolution Continues in 2012 Proxy Season (June 7, 2012).

<sup>10</sup> Ronald D. Orol, *More Boardrooms Target Political Spending*, Wall St. J., Apr. 19, 2012, <http://www.marketwatch.com/story/more-boardrooms-targeted-for-political-spending-2012-04-19>.

<sup>11</sup> The Committee on Disclosure of Corporate Political Spending, *supra* note 3, at 6.

<sup>12</sup> Benjy Sarlin, *Activists Target Boardrooms In Push To Limit Citizens United*, Talking Points

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have gathered outside of numerous annual board meetings in order to petition corporations to disclose their political expenditures. In April, for example, insurance policyholders and public interest advocates protested outside of CIGNA's annual meeting.<sup>13</sup> One protestor lamented that CIGNA "continues to hide how it uses its customers' premiums to support political efforts."<sup>14</sup> Likewise, protestors surrounded WellPoint's 2012 annual meeting, where one demonstrator presented a petition allegedly signed by 15,000 people asking for greater disclosure of political spending.<sup>15</sup> Considering that one in every nine Americans subscribes to a WellPoint plan, policyholder discontent with the company could have serious ramifications.<sup>16</sup>

Though some corporations have responded, many still hide their political spending, leading to embarrassing results when information is leaked or accidentally disclosed. In June 2012, insurance giant Aetna accidentally reported donating over \$4 million to the U.S. Chamber of Commerce and over \$3 million to the American Action Network on its annual statement to the National Association of Insurance Commissioners, even though such information is not legally required.<sup>17</sup> Both organizations are tax-exempt intermediaries that funnel money into issue ads and electioneering communications.<sup>18</sup> Aetna quickly moved to fix the accidental admission,

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Memo, June 13, 2012, <http://2012.talkingpointsmemo.com/2012/06/pushing-back-against-citizens-united-activists-target-boardrooms.php>.

<sup>13</sup> Activists, Shareholders Tell CIGNA to Disclose Secret Spending on Political Front Groups, <http://healthcareforamericanow.org/2012/04/25/activists-shareholders-tell-cigna-to-disclose-secret-spending-on-political-front-groups/> (last visited June 25, 2012).

<sup>14</sup> Matthew Sturdevant, *Protesters Criticize Cigna Executives' Pay, Money Spent To Squash Health-Care Reform*, Hartford Courant, Apr. 25, 2012.

<sup>15</sup> Tom Murphy, *Protestors Disrupt WellPoint Annual Meeting*, Bloomberg Businessweek, May 16, 2012, available at <http://www.businessweek.com/ap/2012-05/>.

<sup>16</sup> Peter Dreier, *Citizens Confront WellPoint: Poster Child for Health Insurance Reform*, Huffington Post, Sept. 22, 2009 available at [http://huffingtonpost.com/peter-dreier/wellpoint-poster-child-fo\\_b\\_294343.html](http://huffingtonpost.com/peter-dreier/wellpoint-poster-child-fo_b_294343.html).

<sup>17</sup> Charles Riley, *Oops! Aetna Discloses Political Donations*, CNN Money, <http://money.cnn.com/2012/06/14/news/economy/aetna-political-contributions/index.htm> (last visited July 5, 2012).

<sup>18</sup> *Id.*

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filing another copy of the statement without these numbers.<sup>19</sup> A rule requiring up-front disclosure of political spending would prevent corporations like Aetna from losing credibility after leaks and stem the rising tide of consumer protests.

Disclosure of political spending also positively impacts the financial stability of corporations. A 2010 report analyzing 80 S&P 500 companies that have voluntarily adopted disclosure policies found that these companies had a 7.5 percent higher industry-adjusted price/book ratio than companies that did not disclose their political spending.<sup>20</sup> This correlation demonstrates that disclosure is not only feasible for large corporations, it is desirable. Two-thirds of CEOs surveyed in 2010 agree that “the lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations.”<sup>21</sup> Likewise, the Committee for Economic Development warns that where transparency is lacking, “[c]orporate resources that might be better spent investing in an enterprise or otherwise building shareholder value” may be blindly funneled into political causes irrelevant to the interests and goals of the company.<sup>22</sup> Alternatively, greater transparency allows corporations “to manage the growing risks associated with the rise of spending” and “protects against the implied threats and elusive promises that regularly accompany secrecy.”<sup>23</sup>

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<sup>19</sup> *Id.*

<sup>20</sup> Americans for Campaign Reform, et al., File No. 4-637, Comments on Petition for Rulemaking on Corporate Political Spending, Submitted by 21 Civic Organizations and Individuals 13, *available at*: <http://www.sec.gov/comments/4-637/4637-21.pdf>.

<sup>21</sup> Committee for Economic Development, “New Business Poll Shows Discontent with Undisclosed Campaign Expenditures Following Citizens United Decision,” Press Release (Oct. 28, 2010).

<sup>22</sup> Committee for Economic Development, “After Citizens United: Improving Accountability in Political Finance,” *Executive Summary* (2011).

<sup>23</sup> Bruce F. Freed, Letter to the Editor, *Political Disclosure Won't Inhibit Corporate Speech*, Wall St. J., Nov. 21, 2011, <http://online.wsj.com/article/SB10001424052970204190504577036601127629604.html>.

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Accordingly, we urge the SEC to take up the Petition for Rulemaking (File No. 4-637) and promulgate regulations requiring corporations to disclose their political spending. Greater disclosure will give companies a financial advantage and improve their reputation among investors and customers.

Sincerely,

American Federation of State, County and Municipal Employees (AFSME)  
Citizens for Responsibility and Ethics in Washington  
Coalition for Accountability in Political Spending  
CREDO Action  
Government Accountability Project  
Health Care for America Now  
Mercy Investment Services, Inc.  
New Progressive Alliance  
NorthStar Asset Management, Inc.  
OMB Watch  
Sunlight Foundation  
U.S. PIRG  
West Virginia Citizen Action Group