The Honorable Gary Gensler, Chair
The Honorable Hester M. Peirce, Commissioner
The Honorable Elad L. Roisman, Commissioner
The Honorable Allison Harren Lee, Commissioner
The Honorable Caroline A. Crenshaw, Commissioner
Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

June 7, 2021

Re: Input on Climate Change Disclosures[1]

Dear Chairman Gensler, Commissioners, and agency staff,

We, the undersigned organizations and individuals, are grateful for the opportunity to respond to the Security and Exchange Commission's (SEC's) request for input on climate- related financial disclosures announced by then- Acting Chair Allison Lee on March 15th, 2021.

In response to question 15 of the request, we detail below the reasons why the agency should require corporations to disclose their political activity. This disclosure is critical for investors on its own, but it is also inextricably linked to climate disclosures. Investors cannot truly have a complete picture of a company's climate- related risk if they are not also able to assess how or whether the company is engaging in political influence activity related to climate change.

Since the U.S. Supreme Court's decision in *Citizens United v. FEC* came down in 2010, corporations have been allowed to spend unlimited undisclosed amounts of money to influence American elections and in turn affect policy outcomes. In his majority opinion in *Citizens United,* Justice Kennedy assumed that with this new paradigm of spending, there would at least be robust disclosure so that shareholders could assess whether the political activity of their companies presented significant risk.[2] This robust disclosure regime did not exist then and it does not exist now. The SEC should require corporate political activity disclosure because it mitigates risk, investors have been asking for this information for a decade, and the change to existing corporate operations will be minimal.

<u>Disclosure Mitigates Risk</u>

A company's political activity- both its election spending and lobbying- is relevant to its shareholders because it can present significant reputational risk if not disclosed and managed properly. Many customers and the purchasing public are paying close attention to whether a company's political activity lines up with its corporate values. If there is a disconnect, companies can face bad press, boycotts, or targeted social media campaigns.

Following the attack on the U.S. Capitol on January 6th, 2021, many large corporations made the decision to suspend donations from their political action committees (PACs). The Conference Board surveyed corporations to learn more about their responses to the insurrection. Of the 84 firms that responded, "46%

[1] *Public Input Welcomed on Climate Change Disclosures,* SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3fpJZ4s.
[2] Paul Blumenthal, *Anthony Kennedy's Citizens United Disclosure Salve 'Not Working,'* HUFFPOST (Nov. 2, 2015), https://bit.ly/3hYBcYY.

cited the belief that a stable democracy is necessary for a stable business environment," and 44.94% cited concerns about the company's reputation.[3]

Understanding corporate political activity is essential to understanding corporate climate risk. A corporation can make every effort to manage its climate impact and disclose that effort to investors. However, that effort is deeply undermined if the corporation is also funneling money to a trade association like the Chamber of Commerce that works to actively undermine climate change mitigation policies without disclosing those payments to investors. Additionally, corporations in the energy and utilities sectors put their investors at particular risk if they engage in undisclosed political activity that worsens the climate crisis and in turn jeopardizes the company's viability over the long term. The following are examples of situations where disclosure would have provided investors with information needed to avoid losses and reputational harm.

ComEd, a subsidiary of Exelon and the largest utility provider in the state of Illinois, has recently been charged with bribing Illinois officials to pass laws favorable to the company. The company faced high profile media coverage for the bribery scandal and a $200 million fine. Exelon could face further penalties from the ongoing SEC investigation.[4] This is an instance where the corruption came to light, but without comprehensive disclosure investors have no way of knowing if similarly damaging activity is going on behind the scenes at their company.

In Ohio, a similar bribery scheme unfolded with First Energy paying nearly $60 million to support Speaker of the House Larry Householder, funneling the money through nonprofits. The company is alleged to have gotten a bailout for nuclear plants in exchange. As a result, shareholders have brought lawsuits that could cost the company hundreds of millions of dollars to settle.[5] In this case, the company failed to specifically disclose payments to 501(c)(4) tax- exempt organizations, a funding conduit that is not currently required to be disclosed.[6]

Even harder to trace is the ecosystem of fake grassroots lobbying campaigns. In November of 2020, the *New York Times* published a story about FTI consulting, a firm that "has been involved in the operations of at least 15 current and past influence campaigns promoting fossil-fuel interests in addition to its direct work for oil and gas clients."[7] As a part of their work, FTI "monitored environmental activists online… helped run a campaign that sought a securities rule change… [and] staffed two news and information sites."[8] FTI was hired to carry out these campaigns by the fossil fuel industry itself as part of an effort to win the public messaging war without revealing the true motivations of the backers. Exxon, which was one of FTI's major clients and directed the content for one of the pro- industry sites, has received requests from its shareholders to be more transparent about its lobbying because of this connection to FTI and many other undisclosed conduits for influence.[9] Exxon's investors argue that the company faces reputational risk from undisclosed political activity and that "the concern for investors is Exxon has a large lobbying footprint, yet a complete picture of its spending to influence public policy, including payments to third-party groups and unreported grassroots lobbying, is unavailable for shareholders."[10] Demonstrating the importance of this issue to investors, shareholders at Exxon approved two proposals at

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[3] Press release, The Conference Board, *Survey: Corporate PACs Took Unprecedented Action by Broadly Suspending Political Contributions Following Capitol Riot* (Feb. 12, 2021), https://bit.ly/3uBtIOl.
[4] *Take Our Power Back*, ILLINOIS PIRG, https://bit.ly/2SzxPNc (viewed on May 27, 2021).
[5] The Associated Press, *Angry shareholders pile into lawsuits that could cost FirstEnergy millions of dollars,* PITTSBURGH POST-GAZETTE (Jan. 1, 2021), https://bit.ly/3vzcQJm.
[6] *Capitol Riot, Bribes and Astroturfing: Dark Money Lobbying Requires Transparency,* PROXY PREVIEW, https://bit.ly/3uqPqnV.
[7] Hiroko Tabuchi, *How One Firm Drove Influence Campaigns Nationwide for Big Oil,* NEW YORK TIMES (Nov. 11, 2020), https://nyti.ms/3p4lYDi.
[8] *Id.*
[9] *To ExxonMobil Shareholders,* SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3bUTu9y.
[10] *Id.*

the company's 2021 annual meeting, one about Exxon's general lobbying activity and a second "asking the company to account for if and how its lobbying aligns with the Paris Agreement."[11]

Investors Demand Disclosure

Corporate political activity remains a top priority for investors. According to the Proxy Preview report for 2021, "concern about undue corporate political influence remains the biggest single issue of concern for shareholder proponents, even though total filings are down from their 2014 apex. Proponents have filed more than 1,000 proposals over the last 10 years."[12] As of May 27, 2021, five election spending disclosure proposals have received average support of 47.2% and twenty lobbying disclosure proposals have received average support of 39.9%.[13]

In 2011, a bipartisan committee of leading law professors filed the first petition requesting a rulemaking at the SEC requiring all public companies to disclose their political expenditures. The petition has received more than 1.2 million comments- the most in the agency's history- from diverse stakeholders including the late founder of Vanguard, John Bogle, five state treasurers, a bi-partisan group of former SEC chairs and commissioners, Members of Congress, and investment professionals representing $690 billion in assets. Additional comments have come in to the agency in support of this rule following the launch of the "Disclosure Effectiveness" review[14] and the Regulation S-K concept release.[15] Nearly 10,000 comments have come in to each of those venues addressing the agency's questions about corporate political spending disclosure and highlighting its materiality and importance to investors.

The Benefits Outweigh the Cost

One argument often made against increase disclosure assumes that the cost to comply would be high for companies. In fact, many of the country's largest companies are already disclosing some or all of their political activity. The number of companies that fully or partially disclosed their election spending in 2020 or that prohibited at least one type of spending was 332, up from 304 in 2016.[16] Additionally, an independent cost- benefit analysis of a potential political spending disclosure rule found that that "the range of economic benefits of this disclosure rule would greatly outweigh the nominal costs imposed on corporations for compliance."[17]

Issuers should be required to disclose the policies and procedures regarding their political activity as well as a description of management's and the Board's decision-making process and oversight for making payments. Issuers should also be required to disclose itemized expenditures for both direct and indirect election spending and lobbying including payments to trade associations, politically active nonprofits, and party committees.

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[11] Katherine Dunn and Sophie Mellor, *ExxonMobil faces historic loss in proxy shareholder battle over future of its board,* FORTUNE (May 26, 2021), https://bit.ly/2RQljZU.
[12] *Corporate Political Activity,* PROXY PREVIEW, https://bit.ly/3vx4YYO.
[13] Calculated based on published vote results.
[14] *Comments on Disclosure Effectiveness*, SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3yM3E67 (viewed on May 27, 2021).
[15] *Comments on Concept Release: Business and Financial Disclosure Required by Regulation S-K,* SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3fObQdr (viewed on May 27, 2021).
[16] THE CENTER FOR POLITICAL ACCOUNTABILITY, 2020 CPA- ZICKLIN INDEX OF CORPORATE POLITICAL DISCLOSURE AND ACCOUNTABILITY, at 8 (October 2020), https://bit.ly/3hXFzDr.
[17] *A Cost-Benefit Analysis of Corporate Political Spending Disclosure,* SECURITIES AND EXCHANGE COMMISSION, https://bit.ly/3bZYKZt.

The language in the federal budget rider does not stop the agency from working on this critical rule,[18] and it should take up the charge immediately. This should be combined with efforts to require corporations to disclose all significant environmental, social, and governance risk including climate, human capital management, country- by- country tax information, and human rights. Again, we appreciate the opportunity to comment on this issue and believe that climate risk is deeply connected to all other components of ESG risk including political activity. Thank you for taking up this critical issue.

Sincerely,

20/20 Vision

Blue Wave Postcard Movement

Boston Common Asset Management

California Clean Money Campaign

Citizens for Responsibility and Ethics in Washington (CREW)

Clean Elections Texas

Clean Yield Asset Management

Common Cause

Decode Democracy

End Citizens United / Let America Vote Action Fund

Feed the Truth

Fix Democracy First

Future Nexus

Harrington Investments, Inc.

Institute for Agriculture and Trade Policy

Interfaith Center on Corporate Responsibility

Mercy Investment Services, Inc.

Network for Responsible Public Policy

Public Citizen

Reinhart Institutional Investor Services

Secure Elections Network

Sierra Club

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[18] Press release, Public Citizen, *CORPORATE REFORM COALITION: Corporate Political Spending Disclosure Rule Can Proceed Despite Omnibus Rider* (Dec. 22, 2015), https://bit.ly/3ftKTN6.

Social Equity Group

Students Against Voter Suppression

Sustainvest Asset Management

The Ethical Capitalism Group

Tracey Rembert, Investor, Asheville, N.C.

Transparency International – U.S. Office

Un-PAC

Union of Concerned Scientists

Unitarian Universalist Association

Wallace Global Fund

WV Citizen Action Group