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June 14, 2021

The Honorable Gary Gensler
Chair
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

Re: Public Input Welcomed on Climate Change Disclosures

Dear Chair Gensler:

On behalf of the American Federation of State, County and Municipal Employees ("AFSCME"), I am writing to provide comments to the U.S. Securities and Exchange Commission (the "SEC" or "Commission") in response to Commissioner Allison Lee's March 15, 2021, request for public input on climate change disclosure.

AFSCME's 1.4 million members provide the vital services that make America happen. With members in communities across the nation, serving in hundreds of different occupations — from nurses to corrections officers, child care providers to sanitation workers — AFSCME advocates for fairness in the workplace, excellence in public services and freedom and opportunity for all working families. AFSCME members participate in the capital markets as participants in over 150 public pension funds, through additional employee benefit plans and as individual investors. The quality of disclosure for public companies in which our members' retirement savings are invested is critical. We appreciate the opportunity to share our views on the important questions that Commissioner Lee has put forward for comment.

We support additional rulemaking by the SEC on environmental, social and governance ("ESG") issues, including mandatory climate change disclosures. We believe the SEC's disclosure rules need to meet investor demand for ESG information, a position AFSCME has previously taken when it signed the 2018 petition for rulemaking on ESG disclosure urging disclosure rulemaking for climate, human capital management, political spending, country by country tax reporting, human rights, gender pay and diversity.¹ We strongly support the recommendations of the SEC Investor Advisory Committee ("IAC") that the time

¹ Request for rulemaking on environmental, social, and governance (ESG) disclosure, Oct. 1, 2018, <https://www.sec.gov/rules/petitions/2018/petn4-730.pdf>.

has come for the SEC to address the issue of ESG disclosures.² As the IAC notes, investors need comparable, consistent information to make investment and voting decisions, and issuers need a clearly defined framework to disclose material, decision-useful, comparable and consistent information. We agree with the IAC that it is important for the SEC to define ESG disclosure for the U.S. capital markets before other jurisdictions impose disclosure regimes on U.S. issuers.

Most issuers are already providing investors varied disclosures on ESG issues, in the form of sustainability reports or sections on their website that report various data on issues like climate, environmental positions or political spending. Many of these voluntary disclosures are the result of engagement with investors, and investors raising issues directly at companies through the shareholder proposal process. Private ordering has produced voluntary disclosures, but these disclosures have clear limitations, including comparability and enforceability. These limitations show the need for clear rules-based, line-item disclosures in this area: investors need comparable and consistent information, and issuers need definitive guidance and a level playing field.

In response to question 15, we believe disclosure of corporate political spending needs to be included as part of climate change disclosures. These issues are inextricably intertwined, and include lobbying and payments to third party groups that lobby on climate. Since 2011, AFSCME has worked with a coalition of investors that have filed more than 400 shareholder proposals asking companies to provide investors lobbying disclosures.³ This has given us a perspective on lobbying's outsized role shaping climate policy, through both direct issuer lobbying and indirect and undisclosed lobbying through trade associations and social welfare groups.

Many issuers have a large lobbying footprint, yet a complete picture of their spending to influence public policy, including payments to third-party groups and unreported grassroots lobbying, is unavailable for investors. While corporate donations to politicians and traditional PACs have strict limits, their payments to trade associations and 501(c)(4) social welfare groups have no restrictions. This means issuers can give unlimited amounts to third party groups that spend millions on lobbying and often undisclosed grassroots activity. This is frequently referred to as dark money spending. Another concern for investors is grassroots lobbying does not get reported at the federal level under the Lobbying Disclosure Act, and disclosure is uneven or absent in states.⁴

Corporations contribute hundreds of millions of dollars annually to trade associations and social welfare groups that lobby indirectly on their behalf. For example, the U.S. Chamber of Commerce has spent more than \$1.6 billion on federal lobbying since 1998. And the undisclosed amounts may be more than double what is being reported. According to a 2019 study, trade associations and social welfare groups spent \$535 million on lobbying in 2017 and as much as

² Recommendation of the SEC Investor Advisory Committee Relating to ESG Disclosure, May 21, 2020, <https://www.sec.gov/spotlight/investor-advisory-committee-2012/esg-disclosure.pdf>.

³ "Institutional Investors Continue to Press Companies for Disclosure of Lobbying in 2019," AFSCME, Feb. 27, 2019, <https://www.afscme.org/press/releases/2019/institutional-investors-continue-to-press-companies-for-disclosure-of-lobbying-in-2019>.

⁴ "Grass-Roots Lobbying Tactics Evade Public Eye, *Roll Call*, March 21, 2013, <https://www.rollcall.com/2013/03/21/grass-roots-lobbying-tactics-evade-public-eye/>.

another \$675 million on unregulated efforts to influence public policy.⁵ The \$675 million that did not qualify as federal lobbying included many staples of modern influence campaigns, such as strategic consulting, broadcast advertising, media relations, social media posts, polling — and even the financing of astroturf campaigns. This highlights a large unknown risk for investors, where absent disclosure, investors do not have a clear picture of issuer spending on undisclosed grassroots lobbying efforts.

There are multiple examples of the energy industry's involvement in campaigns that solicit criticism from outside groups, some of which it finances or staffs, to create the impression of broad-based support for positions. For example, many energy companies are members of Consumer Energy Alliance⁶ (CEA), a 501(c)(4) social welfare organization that has been described as an advocacy front group for some of the country's largest fossil fuel corporations and trade associations.⁷ CEA has drawn attention for its involvement in grassroots campaigns that sent emails and letters using "the names and addresses of people without their knowledge."⁸

Last November, a *New York Times* story noted the oil industry's involvement in multiple influence campaigns nationwide run by FTI Consulting.⁹ The story highlighted the oil industry's efforts to influence public opinion in the face of increasing political pressure over climate change using campaigns "portraying pro-petroleum groups as grass-roots movements" for campaigns in Texas on fracking, Alaska on drilling and even at the SEC to reduce shareholder rights. For example, FTI helped run a campaign to change shareholder proposal rules at the SEC, which was described as protecting the interests of mom-and-pop investors but that aimed to protect oil and gas interests from shareholder pressure to address climate and other concerns.

The dark money scandal at FirstEnergy also illustrates why investors need disclosure of payments to social welfare groups. FirstEnergy is under investigation for allegedly funneling \$60 million through a dark money 501(c)(4) group called Generation Now, which was used for bribery in Ohio.¹⁰ In 2018, FirstEnergy came to agreement with investors to disclose its trade association lobbying payments but failed to include its payments to 501(c)(4)s, leaving a loophole for over \$60 million in undisclosed dark money payments.

Finally, the SEC should take up corporate political spending disclosure due to investor demand. The SEC has received more than 1.2 million comments in support of a rule to require corporate political spending disclosure, including comments from AFSCME,¹¹ institutional investors, members of Congress, state treasurers, former SEC chairs and commissioners,

⁵ "Business Group Spending on Lobbying Is at Least Double What's Being Reported," *The Intercept*, Aug. 6, 2019, <https://theintercept.com/2019/08/06/business-group-spending-on-lobbying-in-washington-is-at-least-double-whats-publicly-reported/>.

⁶ CEA Membership list, <https://consumerenergyalliance.org/about/our-members/>.

⁷ Consumer Energy Alliance background, *Energy and Policy Institute*, <https://www.energyandpolicy.org/consumer-energy-alliance/>.

⁸ "Industry group draws scrutiny over barrage of fraudulent emails in South Carolina," *Think Progress*, Feb. 21, 2018, <https://archive.thinkprogress.org/fraudulent-emails-utility-merger-161fa5b459ce/>.

⁹ "How One Firm Drove Influence Campaigns Nationwide for Big Oil," *New York Times*, Nov. 11, 2020, <https://www.nytimes.com/2020/11/11/climate/fti-consulting.html>

¹⁰ <https://www.energyandpolicy.org/firstenergy-service-company/>.

¹¹ AFSCME Comment Letter (February 1, 2012), available at: <https://www.sec.gov/comments/4-637/4637-175.pdf>.

foundations, pension funds and individual investors. Shareholder proposals asking for disclosure of political contributions and lobbying are one of one top investor topics each year. In 2021, these proposals are receiving record levels of support, including a majority of votes for lobbying disclosure at Exxon. While we recognize there are some current constraints on initiating new rulemaking, we believe the SEC should begin the preliminary work now.

A framework for political spending disclosure should capture both political contributions and payments used for lobbying. At a minimum, any disclosure regime should capture all dark money payments to trade associations and social welfare groups. Internal Revenue Code 162 is instructive here.¹² If a company cannot deduct a payment under section 162(e) of the code, they should be required to disclose these payments to investors.

We support the Commission's efforts to meet investor need and demand for additional ESG disclosures, including climate, while providing a clear and level playing field for issuers to provide these disclosures. We also urge the Commission to update disclosure rules on ESG issues into its integrated disclosure regime, including political spending as described herein, and other issues like workforce disclosures and tax reporting, given the overwhelming investor interest in this information. We appreciate the opportunity to share our views on these important issues. If you have any questions, or need additional information, please do not hesitate to contact [REDACTED]
[REDACTED]

Sincerely,

/s/ Dalia R. Thornton

Dalia R. Thornton
Director
Department of Research &
Collective Bargaining Services

¹² 162(e)(1): <https://codes.findlaw.com/us/title-26-internal-revenue-code/26-usc-sect-162.html>.