We Make America Happen

February 1, 2012

VIA EMAIL (rule-comments@sec.gov)
Ms. Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 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,

We write in strong support of the above-referenced petition for rulemaking (the "Petition") by the Committee on Disclosure of Corporate Political Spending, asking the Commission to propose rules requiring disclosure of political expenditures by public companies. The American Federation of State, County and Municipal Employees ("AFSCME"), is the largest union in the AFL-CIO, representing 1.6 million state and local government, health care and child care workers. AFSCME members participate in over 150 public pension systems whose assets total over $1.7 trillion. Through public policy advocacy and company-specific initiatives, AFSCME has long championed transparency and accountability in the capital markets.

As discussed more fully below, transparency regarding the use of corporate resources for political activity is necessary to enable investors to evaluate and price the risks associated with such spending. There is abundant evidence that investors put a high value on political spending disclosure. The benefits of disclosure would substantially outweigh the costs, which would be minimal. Accordingly, AFSCME urges the Commission to propose rules requiring public companies to disclose their political spending.

The Risks Created by Corporate Political Spending

Corporations fund political activities in several different ways. They contribute to candidates for state and local office, political parties and ballot initiatives. Corporations pay dues and make other payments to organizations, such as trade associations, that engage in political activity. Following the Supreme Court's 2010 decision in Citizens United v. FEC, corporations can now make unlimited "independent expenditures," which are not coordinated with a candidate but are intended to influence the outcome of an election.

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Currently, a patchwork of state and federal regulations governs corporate political spending and disclosure. State laws vary significantly, and state disclosure is presented in a various formats. No public disclosure is required by corporations of their contributions to trade associations or other politically active non-profit organizations, excepting 527 groups, that use these contributions for political purposes.

Political spending by intermediaries has exploded in recent years. Non-party organizations, including trade associations, spent $305 million in the 2010 midterm elections, more than four times the amount they spent in 2006. Organizations that keep their donors' identities secret have increased their spending even more dramatically: their 2010 expenditures were more than 25 times their 2006 expenditures. (J. Crewdson et al., "Secret Donors Multiply in U.S. Election Spending," Bloomberg, May 19, 2011) (available at http://www.bloomberg.com/news/2011-05-19/secret-donors-multiply-in-u-s-with-finances-dwarfing-watergate.html))

Some companies argue that disclosure is unnecessary because the market helps ensure that political spending is in the best interest of companies and their shareholders. In this account, companies participate in the political process solely in order to obtain more favorable regulatory treatment or advantage themselves vis a vis their competitors. But there is reason to believe that this is not the case. As Bebchuk and Jackson observed in a recent paper, "the interests of directors and executives with respect to political spending often diverge from those of shareholders." (Lucian A. Bebchuk & Robert J. Jackson, Jr., "Corporate Political Speech: Who Decides?" at 8 (2010) (available at www.ssrn.com) An executive may be influenced by political ambitions or by personal political preferences when deciding to use corporate funds for political purposes. Shareholders agree that political spending presents a problem of executive political preference, with a 2006 survey by Mason-Dixon Polling & Research finding that 73% of shareholders agreed that corporate political spending is often undertaken to advance the private political interests of corporate executives rather than the interest of the company and its shareholders. (Mason-Dixon Polling and Research, Corporate Political Spending: A Survey of American Shareholders, at 9 (2006) (available at http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918))

Recent empirical studies support a conclusion that corporate political spending is not generally value-enhancing. Professor John Coates of Harvard analyzed political spending by S&P 500 companies[1] and found that in a majority of industries, political activity is associated with lower shareholder value. (John C. Coates IV, "Corporate Politics, Governance and Value Before and After *Citizens United*," at 21-22 (2011) (available at www.ssrn.com)) Political activity was also positively correlated in most industries with personal use of the corporate jet, a proxy for a tendency to take actions not in the interests of shareholders (an example of what is sometimes referred to as an

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[1] Indirect spending through conduit organizations such as trade associations was not analyzed in the study due to the unavailability of data on it.

"agency problem"). (Id. at 18-19) Professor Coates also found that 11% of a group of 298 CEOs who retired over the past ten years were appointed or elected to political office after their retirement. (Id. at 19) Coates concluded that his results "are inconsistent with a simple theory in which corporate political activity generally serves the interests of shareholders." (Id. at 25)

A study by Rajesh Aggarwal and two co-authors reached similar conclusions. This study found that the amount of soft money donations[2] and contributions to 527 groups[3] a company made from corporate funds was negatively correlated with returns to shareholders, even after controlling for donating firms' worse corporate governance. (Rajesh K. Aggarwal et al., "Corporate Political Contributions: Investment or Agency?" at 15-17 (2011) (available at www.ssrn.com)) Donating firms engaged in more acquisitions and their acquisitions had lower returns than those made by non-donating firms. (Id. at 17-18) The study's results, the authors stated, "suggest that corporate political donations in the United States are reflective of agency problems." (Id. at 22)

An empirical analysis by Michael Hadani using data on corporate PAC contributions between 1997 and 2008 found that PAC expenditures were negatively correlated with firm value and had no relationship to return on sales. Hadani concluded that "the large scale analysis results indicate that firms' donations to politicians are not effective in promoting firms outcomes and indeed may harm them." (See Comment of Michael Hadani on the Petition, at 11 (available at http://sec.gov/comments/4-637/4637-8.pdf))

In addition to the risk of managers being guided by their personal preferences rather than company interests, companies' political spending creates a variety of risks for their businesses and long-term shareholder value. Company contributions might be used in ways that run counter to the company's values or public image. This danger is particularly acute when companies donate funds to intermediary organizations, such as trade associations, which then have discretion about how to use the money.

In 2010, retailer Target faced a consumer backlash after it became public that the company had donated money to a political organization that in turn supported a candidate for the Minnesota governorship who opposed gay marriage and made many anti-gay statements at odds with the company's gay-friendly reputation. (See Andrea Chang, "Target, Gay Rights Supporters At Odds Over How to Settle Dispute," Los Angeles

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[2] Soft money donations are "unlimited campaign donations to the national parties for party-building activities." (Aggarwal et al., at 6)

[3] Although 527 groups include all political organizations exempt from federal taxation under section 527 of the Internal Revenue Code, such as political parties, candidate committees and PACs, the term is commonly used (and is used herein) to refer only to those political organizations that "raise money for political activities like voter mobilization efforts and issue advocacy." (Id.)

Times, Apr. 8, 2011 (available at http://articles.latimes.com/2011/apr/08/business/la-fi-target-gay-20110409); Tommy Christopher, "Target/Best Buy Gay Rights Boycott Tests Citizens United Decision," Mediaite, July 29, 2010) (available at http://www.mediaite.com/online/targetbest-buy-gay-rights-boycott-tests-citizens-united-decision/))

In addition, a business strategy that relies heavily on gaining advantages through political activity, rather than by making better products or providing better services, is vulnerable in the event of changes in the political landscape. As Harvard's John Coates has stated, "politics like war is hard to predict." (Coates, at 26) A firm may forego innovation, for instance, if it believes that its political activities will ensure a market for its existing products. Disclosure of the extent of a company's political involvement would help investors identify these companies.

Although lack of disclosure frustrates efforts to quantify corporate political spending, it seems likely that significant amounts of money are involved. Bebchuk and Jackson tallied amounts raised and spent for political purposes in 2008 alone by five large intermediaries that serve corporate interests--the U.S. Chamber of Commerce, American Petroleum Institute, Business Roundtable, Financial Services Roundtable and National Association of Manufacturers--and found that those five organizations spent more than $130 million in 2008 on lobbying and political expenditures. (Bebchuk & Jackson, at 12) And in 2009, the U.S. Chamber of Commerce and seven other trade groups spent some $500 million on lobbying and political expenditures. (Noam Levey and Kim Geiger, "Much Corporate Political Spending Stays Hidden," Los Angeles Times, Apr. 23, 2011) Some companies maintain political action committees (PACs), to which individual executives and employees contribute and which are used to support candidates. In the 2007-2008 election cycle, PACs are estimated to have spent over $300 million on national races. We agree with Bebchuk and Jackson that "the previous willingness of executives to spend substantial amounts in support of candidates even when they were personally required to bear the full costs of such support suggests that executives would be willing to spend even more to advance such causes using corporate funds" post-Citizens United. (Id. at 13-14.)

Moreover, the Commission has required companies to make disclosure about matters involving relatively small amounts of money when conflicts of interest increase the likelihood that managers or directors will make self-interested decisions that are not in shareholders' best interests. For instance, the Commission requires companies to disclose related party transactions (i.e., transactions between the company and an officer, director or significant shareholder) if the amount involved exceeds $120,000, a very small amount for a public company. (See Item 404(a) of Regulation S-K.) Similarly, top executive officer compensation must be disclosed in significant detail, regardless of amount. (See Item 402 of Regulation S-K.)

The Supreme Court's majority opinion in Citizens United stated that "there is little evidence of abuse that cannot be corrected by shareholders 'through the procedures of shareholder democracy.'" (558 U.S. __ (2010), slip op. at 3 (internal citation omitted) (available at http://www.supremecourt.gov/opinions/09pdf/08-205.pdf)) Without full disclosure, however, corporate accountability mechanisms cannot function and managers will remain free to expend corporate funds in ways that undermine shareholder welfare.

Investor Support for Disclosure

Strong investor interest in corporate political spending has been building for nearly a decade. A 2006 survey by Mason-Dixon Polling & Research found that 87% of shareholders agreed with the proposition that they would have more confidence investing in corporations that have adopted reforms providing for transparency and oversight of political spending. Furthermore, 95% of shareholders agreed that corporations should make certain that political contributions made to trade associations be consistent with company policies and be fully disclosed. (Mason-Dixon Polling and Research, at 7 and 11)

The number of shareholder proposals seeking disclosure of political spending also illustrates the intensity of shareholder interest. Institutional Shareholder Services reported that political spending disclosure proposals were the second most popular type filed in 2011; the 78 proposals filed in 2011 represented a substantial increase over the 48 proposals filed in the first half of 2010. (Ted Allen, "Shareholder Proposals to Receive More Attention," ISS Governance Blog, Apr. 18, 2011 (available at http://blog.issgovernance.com/gov/2011/04/shareholder-proposals-to-receive-more-attention.html) As the Petition notes, citing Shark Repellent data, 50 proposals on political spending disclosure appeared on company proxy statements in the 2011 proxy season, more than any other type of proposal. As well, a higher proportion of political spending proposals were submitted by institutions than is the case overall for other types of shareholder proposals, reinforcing the level of interest from mainstream institutional investors.

Support levels for these contributions have also been growing. In 2011, political spending disclosure proposals averaged 32.5% support, an increase from the 30.4% support level they enjoyed in the 2010 proxy season (Ted Allen, "Greater Support for Shareholder Proposals on E&S Issues," ISS Governance Blog, June 20, 2011 (available at blog.issgovernance.com/gov/2011/06/greater-support-for-shareholder-proposals-on-es-issues.html) and average support of 20% in 2006. (Tiffany Kary, "Shareholders Favor More Disclosure," The Wall Street Journal, Oct. 4, 2006 (available at http://www.politicalaccountability.net/index.php?ht=action/GetDocumentAction/i/432)) The Petition discusses several instances in which the Commission has in the past used the number of and support obtained on shareholder proposals (including support levels far below those enjoyed by political disclosure proposals) to gauge shareholder interest in an issue. (Petition at 2-3)

That the Council of Institutional Investors ("CII"), an organization representing pension funds with combined assets in excess of $3 trillion, has adopted a policy favoring political spending disclosure is further evidence of strong investor interest. Section 2.14 of CII's Corporate Governance Policies states that a company's "board should disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made by the company during the prior fiscal year," including payments to third parties earmarked for political activities. (See www.cii.org/policies) Similarly, the International Corporate Governance Network, a global nonprofit organization whose institutional investor members manage $18 trillion in assets, has come out in support of the Petition. (See http://sec.gov/comments/4-637/4637-6.pdf)

Costs of Disclosure Are Small

In relation to the benefits outlined above, the costs to companies of providing disclosure are very small. Because political contributions are not tax deductible, companies that engage in political activity already must track their contributions (including payments to intermediaries used for political purposes). Thus, no new accounting or other internal system would be required to implement a rule requiring political spending disclosure.

Assuming any new disclosure requirement is imposed as part of a company's periodic filing obligations (i.e., in a 10-K or similar filing), or were required on a company website with some kind of notification to investors in a periodic filing, no additional printing, filing or mailing costs would be incurred. Instead, companies would add a modest amount of text to existing filings.

Some might argue that political spending disclosure would inflict competitive harm on companies. The fact that 57 companies in the S&P 100 disclose direct political contributions, and 43 companies in the S&P 100 disclose some information about their indirect spending, undermines this claim. (Center for Political Accountability, The CPA-Zicklin Index of Corporate Political Accountability and Disclosure, at 5 (2011) (available at http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/5800)) And the fact that intermediary membership organizations such as trade associations are formed for collaborative purposes and are often made up of companies operating in a specific industry undermines the argument that disclosing the use of intermediary membership organizations to engage in political spending would reveal proprietary information and cause competitive harm.

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To conclude, we urge the Commission to propose rules requiring public companies to disclose their political expenditures at the federal, state and local level, including electioneering communications, independent expenditures and payments to non-profit organizations used for political purposes. Such disclosure would promote market efficiency, deter self-dealing by company managers and allow investors to identify companies where shareholder value is at risk due to political activity. The costs of such disclosure, which can be expected to be minimal, would be dwarfed by the benefits it would provide.

We appreciate the opportunity to share our views with the Commission on these important issues. If you have any questions, or need additional information, please do not hesitate to contact Lisa Lindsley at (202) 429-1275.

Sincerely,

Gerald W McEntee

GERALD W. McENTEE
International President