

# SEC Should Protect Investors by Requiring Public Companies to Disclose Political Spending

May 6, 2015

Hon. Mary Jo White  
Chair, Securities and Exchange Commission  
100 F Street Northeast  
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 Chair White,

We urge the SEC to issue rules requiring the disclosure of political expenditures by publicly held companies. We are 144 business leaders, entrepreneurs, investors, and philanthropists. Some of us are investment professionals. We hold billions of dollars in investments. Consequently, we have interests in having the companies in which we invest avoid potentially unproductive and risky political expenditures. Securities and Exchange Commission action requiring disclosure of such expenditures is necessary to provide the comprehensive information we need to act as responsible owners.

The absence of disclosure of corporate political spending prevents shareholders and investors from assessing corporate legal, reputational, operational, and other risks. As a result:

- Shareholders cannot properly exercise their ownership rights of corporate oversight;
- Investors cannot make informed investment decisions;
- Shareholders cannot monitor whether such spending may be at odds with the best interests of the corporation or other wider economic concerns; and
- Shareholders cannot determine whether corporate political expenditures are supporting individuals or groups that engage in advocacy on other issues to which they object, and therefore cannot exercise their ownership rights by attempting to restrict such spending or by selling their stakes in the company.

Disclosure of corporate political spending is necessary so that shareholders can evaluate whether a corporation's assets are being utilized in the best interests of the corporation. For example, a corporation may contribute to an organization advocating for corporate tax reform, but that organization may also advocate on a number of other issues that would adversely affect the corporation, such as opposing legislation to deal with climate change that could pose a long-term threat to the corporation's facilities. The Supreme Court in its *Citizens United* decision expressly endorsed the concept of prompt corporate disclosure to allow shareholders to "determine whether their corporation's political speech advances the corporation's interest in making profits."<sup>i</sup>

Moreover, corporations may contribute to organizations that support positions or support candidates who take positions contrary to some shareholders' interests or beliefs in a variety of social, economic, and environmental issues. If shareholders are to avoid subsidizing speech they do not support, they need corporate disclosure of political expenditures to be able to take measures to stop or restrict expenditures they may find objectionable and, if necessary, disassociate themselves from such expenditures by selling their shares. As the Supreme Court wrote this year, "except perhaps in the rarest of circumstances, no person in this country may be compelled to subsidize speech by a third party that he or she does not wish to support."<sup>ii</sup>

Disclosure of political expenditures would also give shareholders a means of averting contributions that may damage the corporation's reputation. The risk and the difficulty in evaluating that risk is compounded when the corporation contributes to third parties such as trade associations or politically active 501(c)(4) groups. Target encountered precisely this problem in 2010 when some consumers boycotted its stores after discovering that the company had made a contribution to an organization which supported a gubernatorial candidate who opposed same-sex marriage and other gay rights measures. The matter resulted in considerable news coverage and a public apology from the company.<sup>iii</sup>

And there seems to be no compelling reason why corporations should not disclose their political expenditures. Keeping track of such spending involves minimal outlays for recordkeeping and publication. Merck, which set up a committee to oversee political contributions after consultation with shareholders, apparently developed reporting measures that were quite manageable. Merck's vice president of state government affairs and policy stated: "The administrative burden wasn't much of a problem."<sup>iv</sup>

Shareholder interest in this issue is more than sufficient to justify SEC action. Prior SEC rules have been crafted to require reasonable disclosure of information for any significant number of interested investors, not just at the request of a majority of shareholders. Over the past three years, the 221 shareholder proxy proposals concerning political and lobbying expenditures earned an average of 24.5% support; two proxy proposals adopted with over 50% vote totals in 2013.<sup>v</sup> This level of support is substantially higher than the 11.2% proxy voting support for executive pay proposals cited by the SEC when it expanded those rules in 1992.<sup>vi</sup> It is worth noting that the proxy vote totals may underestimate the number of investors supporting disclosure since management and executives often own large numbers of shares and typically vote against such proposals.

The Commission has the responsibility to protect investors, and disclosure is essential to that protection. Investors must have access to corporate political spending information if they are to make informed decisions, evaluate risks, monitor the effectiveness of the businesses they own as shareholders, take appropriate action when such spending conflicts with their own beliefs, and avoid reputational harm to the company. As the SEC's website points out, "all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it, and so long as they hold it."<sup>vii</sup>

Shareholders and investors will continue to bear unknown risks until the Commission enacts robust rules on disclosure of corporate political spending. We urge the Commission to promulgate such rules as soon as practicable. We are happy to provide additional information on any of the points raised in this letter. If you need any further information, Daniel Simon, [REDACTED], will be happy to assist the Commission.

Sincerely,

Brian Arbogast  
Seattle, WA

Cynda Arsenault  
Superior, CO

Nancy Bagley  
Washington, D.C.

Kathleen Barry

Berkeley, CA

Anne Bartley  
San Francisco, CA

Marc Baum New York, NY	Healdsburg, CA	Los Altos, CA
Lawrence Benenson New York, NY	Roy Crawford Whitesburg, KY	Antonio Elmaleh Ringoes, NJ
Georgia Berner Zelienople, PA	Harriett Crosby Cabin John, MD	Lauren Embrey Dallas, TX
Larry Birenbaum Saratoga, CA	Alan Davis San Francisco, CA	Andrew Faulk San Francisco, CA
Loren Blackford New York, NY	Patrick deFreitas Salt Lake City, Utah	Mark Ferron Mill Valley, CA
Leonore Blitz Washington, DC	Ariane de Vienne New York, NY	Jerry Fiddler Berkeley, CA
Jabe Blumenthal Seattle, WA	Pouria Dehgan New York, NY	Christopher Findlater Miami Beach, FL
Robert Bowditch Brookline, MA	David desJardins Burlingame, CA	John Fullerton Greenwich, CT
Louise Bowditch Brookline, MA	Cynthia DiBartolo New York, NY	Margaret Gamble Boyer San Francisco, CA
Brady Brim-DeForest Santa Monica, CA	Lisa Dietel Seattle, WA	Ron Garret La Canada, CA
Cassie Carroll Seattle, WA	William Dietel Flint Hill, Virginia	David Goldschmidt Oakland, CA
Yue Chen New York, NY	Victoria Dietel-Hopps Yarmouth, Maine	James Gollin Santa Fe, NM
Marilyn Clements Stamford, CT	Shirley Dinkins Pleasanton, CA	Barbara Grasseschi Healdsburg, CA
John Clements Stamford, CT	Amy Domini Cambridge, MA	Anthony Grassi Camden, ME
Ben Cohen Williston, VT	William Donaldson Pittsford, NY	Richard Graves Washington, DC
Michael Connolly New York, NY	Mitchell Draizin New York, NY	Paul & Eileen Growald Shelburne, VT
Anthony Crabb	Douglas Edwards	Garrett Gruener

Berkeley, CA	San Francisco, CA	Brookline, MA
Richard Gunther Los Angeles, CA	Melissa Johnsen Saint Louis, MO	Richard Mader Glendale, CA
Jeffrey Gural New York, NY	Joseph Kaempfer McLean, VA	Hal Malchow Arlington, VA
Diana Hadley Tuscon, AZ	Albert Kaneb Newton, MA	Win McCormick Portland, OR
Nick Hanauer Seattle, WA	Joel Kanter Vienna, VA	Terence Meehan New York, NY
John Harrington San Rafael, CA	Craig Kaplan New York, NY	Dennis Mehiel White Plains, NY
Paul Harstad Boulder, CO	Woody Kaplan Boston, MA	Roger Milliken Cumberland, ME
Lawrences Hess San Diego, CA	Norman Kaplan Dallas, TX	Rachel Moore Ashfield, MA
Anne Hess New York, NY	Barry Karas Washington, DC	Lawrence Ottinger Chevy Chase, MD
Suzanne Hess San Diego, CA	Michael Kieschnick San Francisco, CA	Jo Ousterhout Washington, DC
Barbarina Heyerdahl Montpelier, VT	Loren Kieve San Francisco, CA	Carl Page Palo Alto, CA
Arnold Hiatt Boston, MA	Ethel Klein New York, NY	Yolanda Parker Los Angeles, CA
Daniel Hildreth Portland, ME	Betsy Krieger Baltimore, MD	Frank Patitucci Pleasanton, CA
Leo Hindery New York, NY	Dal LaMagna East Norwich, NY	Judy Patrick Oakland, CA
Joan Huffer Alexandria, VA	Ruth Lipsomb Bellevue, WA	Morris Pearl New York, NY
William Janeway New York, NY	Anna Lyles Princeton, NJ	Zach Polett Little Rock, AR
Frank Jernigan	Neal MacMillan	Stephen Prince

New York, NY

Wade Randlett  
San Francisco, CA

Catherine Raphael  
Pittsburgh, PA

Lisa Renstrom  
Washington, DC

Charles Rodgers  
Boston, MA

Abigail Rome  
Silver Spring, MD

Marsha Rosenbaum  
San Francisco, CA

Steve Roth  
Seattle, WA

Fred Rotondaro  
Shady Side, MD

Carlynn Rudd  
Washington, DC

Vin Ryan  
Boston, MA

William Samuels  
New York, NY

Guy Saperstein  
Piedmont, CA

Keike Schmitz  
Palo Alto, CA

John Schram  
San Francisco, CA  
Benjamin Schwartz  
West Springfield, MA

Claire Silberman  
Brooklyn, NY

Ian Simmons  
Cambridge, MA

Daniel Simon  
New York, NY

Adam Simon  
Concord, MA

James Simon  
New York, NY

Ryan Smith  
Salt Lake City, UT

Daniel Solomon  
Bethesda, MD

Cathy Steck  
New York, NY

Nancy Stephens  
Los Angeles, CA

Faye Straus  
Lafayette, CA

Patricia Stryker  
Fort Collins, CO

Ritchie Tabachnick  
Pittsburgh, PA

Paula Sanger

Cranston, RI  
Valerie Tarico  
Seattle, WA

Michael Thornton  
Boston, MA

William Titelman  
Washington, DC

Carol Tolan  
New York, NY

Katherine Villers  
Concord, MA

Philippe Villers  
Concord, MA

Kathy Washienko  
Seattle, WA

Daniel Weise  
Kirkland, WA

Millicent Patricia West  
Philadelphia, PA

Kelly Williams  
New York, NY

Carol Winograd  
Stanford, CA

Terry Winograd  
Stanford, CA

Joseph Zimlich  
Fort Collins, CO

Paul Zygielbaum  
Santa Rosa, CA

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<sup>i</sup> Citizens United v. Federal Election Commission, 130 S. Ct. 867 (2010)

<sup>ii</sup> Harris v. Quinn, No. 11-681, slip op. at 39 (S. Ct. June 30, 2014) <[http://www.supremecourt.gov/opinions/13pdf/11-681\\_j426.pdf](http://www.supremecourt.gov/opinions/13pdf/11-681_j426.pdf)>.

<sup>iii</sup> Wing, Nick. "Target Apologizes For Political Donation To Group Supporting Anti-Gay Candidate." The Huffington Post. Huffington Post, 5 Aug. 2010. Web. 14 July 2014. <[http://www.huffingtonpost.com/2010/08/05/target-apologizes-for-pol\\_n\\_672167.html](http://www.huffingtonpost.com/2010/08/05/target-apologizes-for-pol_n_672167.html)>.

<sup>iv</sup> Rummell, Nicholas. "Political Disclosures: Reaching The Tipping Point." Corporate Secretary. Corporate Secretary, Cross Border, Ltd., 10 Oct. 2013. Web. 14 July 2014. <<http://www.corporatesecretary.com/articles/proxy-voting-shareholder-actions/12556/political-disclosures-reaching-tipping-point/>>.

<sup>v</sup> Sustainable Investments Institute. 2013 Season Poised To Break Records In Filings, Support Levels For Environmental And Social Policy Shareholder Resolutions. 20 Aug. 2013. Web. 14 July 2014.

<sup>vi</sup> Bebchuk, Lucian, and Robert J. Jackson, Jr. "Responding to Objections to Shining Light on Corporate Political Spending (5): The Claim That Shareholder Proposals Requesting Disclosure Do Not Receive Majority Support." Blog Post. Harvard Law School Forum on Corporate Governance and Financial Regulation. N.p., 29 Apr. 2013. Web. 14 July 2014. <<http://blogs.law.harvard.edu/corpgov/2013/04/29/responding-to-objections-to-shining-light-on-corporate-political-spending-5-the-claim-that-shareholder-proposals-requesting-disclosure-do-not-receive-majority-support/>>

<sup>vii</sup> United States Securities and Exchange Commission. "The Investor's Advocate: How the SEC Protects Investors, Maintains Market Integrity, and Facilitates Capital Formation." SEC.gov. Web. 14 July 2014.