From: Emma Boorboor
Sent: Monday, March 10, 2014 11:05 AM
To: OFM Performance and Planning
Subject: U.S. PIRG Comments on SEC Strategic Plan

March 10, 2014

Securities and Exchange Commission

100 F Street, NE

Washington, D.C. 20549

RE: SEC 2014-2018 Strategic Plan, Comments on Rulemaking on Disclosure of Corporate Political Spending

The United States Public Interest Research Group (U.S. PIRG), the federation of state Public Interest Research Groups (PIRGs), stands up to powerful special interests on issues such as product safety, public health, campaign finance reform, tax and budget reform and consumer protection. We applaud the SEC for making the quality and usefulness of disclosure a top priority in its strategic plan.

It is clear that for both the investor community and the public at large, disclosure of political expenditures is one of the highest priorities for the SEC to address because of the importance of this information when evaluating a company. The three-quarters of a million public comments submitted to date indicate the unprecedented volume and range of support for disclosure of political expenditures, with calls for action coming from investors, academics, and the general public.

Such a step would help realize the strategic vision laid out in the draft plan of achieving "transparent disclosure to investors of the risks of particular investments" and "promotion of disclosure of market-related information." New disclosure rules around public companies' electoral spending could expose legal, regulatory and business risks not otherwise apparent to investors in its existing public

disclosures. To this end, U.S. PIRG encourages the SEC to use the opportunity presented by the four-year strategic plan to develop rules mandating disclosure to investors, shareholders, and the public of corporate political expenditures.

American corporations have long been major financial players in the political process, by raising and spending campaign funds in federal elections through political action committees (PACs) and lobbying federal and state governments. Until recently, most of this corporate political spending was subject to regulation and disclosure through campaign finance and lobbying laws.

Corporate funds generally were not allowed to be used to pay for express advocacy campaign ads (independent expenditures) at the federal level or in state and judicial elections in 24 states, nor could corporate treasury funds be used to pay for "electioneering communications" in federal elections and a small handful of states. As a result, corporate governance procedures guiding corporate decisions to make direct political expenditures out of treasury funds were unnecessary.

All that changed on January 21, 2010, when the U.S. Supreme Court radically changed federal and state campaign finance laws in the *Citizens United v. Federal Election Commission* decision. The Court dramatically reversed earlier precedent and ruled that corporations and unions have the right to use general treasury funds to pay for unlimited independent expenditures and electioneering communications supporting or attacking federal, state, or judicial candidates. Overnight, the Court opened up new pathways for unlimited political expenditures by corporations – pathways that largely fall outside responsible corporate governance rules and procedures.

In the 2012 election, for-profit corporations were the second largest donors to Super PACs accounting for 12% of all contributions. While a portion of corporate political spending is already disclosed under campaign finance laws, contributions to dark money groups are not made public. This remains a significant problem as 31% of outside spending reported to the FEC was "secret spending" coming from organizations that are not required to disclose the original sources of their funds. The new and growing role of undisclosed corporate expenditures in American elections requires the Securities and Exchange Commission to step up to the plate, regardless of any actions that may or may not come from the FEC. The *Citizens United* decision poses more than a campaign finance problem: it has elevated to whole new levels the problem of responsible corporate governance when deciding when, or whether, to make political expenditures.

Shareholders have been concerned about the business sense of corporate political spending for some time – concerns that have become vastly more pronounced as the scope and nature of corporate political activity has expanded. Current and ongoing research on the effects of corporate political spending on overall value substantiates those concerns. Furthermore, the number of shareholder resolutions calling for enhanced transparency and oversight of political spending decisions continue to outpace all previous years. The 2013 shareholder season marked an all time high, with more than 120 proposals introduced dealing with corporate political spending, according to the U.S. Chamber of Commerce.

At the same time, many business executives are expressing concern over the proper role of corporations in the political arena. Surveys of top business leaders show considerable support for transparency and oversight, which is reflected in a notable trend toward voluntary policies governing political activities. These voluntary policies, however, are not a complete solution. They are often inconsistent, unenforced and disparate between economic sectors.

The SEC should require publicly traded companies to disclose to shareholders and the public their expenditures used for political purposes, above a *de minimis* threshold. Disclosure must include donations to trade associations that help finance electioneering and/or lobbying activities. The SEC rule should require companies to obtain from their trade associations an enumeration of the amount of their contributions used for lobbying and electioneering. Electioneering expenditures could be calculated relatively simply by taking the amount the third party group spent on activities recognized by federal election law, such as on "independent expenditures" and "electioneering communications."

Distinguishing between electioneering and lobbying spending is important because electioneering activities are most likely to alter the national political landscape. Electioneering spending is also most apt to breed corruption, which can run in both directions – politicians can corrupt corporate officials as much as the reverse. The Supreme Court carved out a special place for the regulation of electioneering spending in the wake of the Watergate scandal, and an important aspect of *Citizens United* was the Court's endorsement of disclosure in the new campaign finance regime it created.

Furthermore, the SEC should not assume that the only interest of shareholders is the return on their investment. Disclosure also enables shareholders to make investments that are consistent with the

shareholder's public and private values. In implementing its strategic plan, the SEC should understand that the value of disclosure to investors is not simply the size of an expenditure. The use to which an expenditure is put often communicates about a company's values, plans and objectives than the amount expended.

The SEC plan acknowledges in objective 3.2 the importance of listening to investors to understand their needs. We agree that that's important. In fact, the 750,000 public comments already received document that investors are asking for this information. If the SEC's strategic plan is implemented solely based on the private assessment of the Commissioners or the staff of what disclosure is of value to investors, it will fail to fulfill the mission of protecting investors, maintaining fair, orderly and efficient markets and facilitating capital formation.

We close these comments by urging the SEC to heed the 750,000 comments already submitted regarding how it can enhance disclosure to the benefits of shareholders and the public alike. There is no better test of the SEC's commitment to enhancing the quality and usefulness of disclosure than how it responds to this petition.

Sincerely,

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United States Public Interest Research Group