

**BEFORE THE COMMITTEE ON DISCLOSURE OF  
CORPORATE POLITICAL SPENDING  
SECURITIES AND EXCHANGE COMMISSION**

---

Petition For Rulemaking On Disclosure By Public Companies Of  
Corporate Resources Used For Political Activities

---

1. Citizens for Responsibility and Ethics in Washington (“CREW”) respectfully submits this petition for rulemaking seeking regulations that would require public companies to disclose to shareholders the use of corporate resources for political activities. Despite the submission of a similar petition on August 3, 2011, by the Committee on Disclosure of Corporate Political Spending (“2011 Petition”),<sup>1</sup> that garnered an unprecedented level of public support – at least 700,000 signatures – and the inclusion of this matter on the 2013 regulatory agenda for the Securities and Exchange Commission (“SEC”), the SEC has now abandoned consideration of regulations that would require public companies to disclose political activity spending. At the same time, however the need for and public interest in these regulations have increased exponentially.

2. This petition incorporates by reference the 2011 Petition. CREW submits this additional rulemaking petition to update the SEC on the ineffectiveness and limitations of political spending disclosure policies public companies have voluntarily adopted, which have proven to be no effective substitute for a regulatory scheme that would impose a uniform, disclosure regime on all public companies.

3. Petitioner CREW is a non-profit, non-partisan corporation organized under § 501(c)(3)

---

<sup>1</sup> File No. 4-637, Petition for Rulemaking on Corporate Political Spending, Committee on Disclosure of Corporate Political Spending, August 3, 2011.

of the Internal Revenue Code. CREW is committed to protecting the rights of citizens to be informed about the activities of government officials, ensuring the integrity of government officials, and protecting the integrity of our political system against corruption. CREW works to advance reforms in the areas of campaign finance, lobbying, ethics, and transparency. To advance its mission, CREW uses a combination of research, litigation, advocacy, and education to disseminate information about public officials, their actions, and the influences brought to bear on those officials. CREW's work focuses, in part, on exposing the special interests that have secretly poured vast amounts of money into our electoral system, including public companies.

### **Statutory And Regulatory Background**

4. Section 14(a) of the Securities Act of 1934 specifies disclosure obligations to which all public companies are subject. At the same time, Congress accorded the SEC discretion to promulgate "such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors." Section 14(a), 15 U.S.C. § 78n(a).

5. Courts have recognized the SEC's "broad discretionary powers to promulgate . . . rules requiring disclosure of information beyond that specifically required by statute." *Natural Res. Defense Council, Inc. v. SEC*, 606 F.2d 1031, 1050 (D.C. Cir. 1979). With respect to the disclosure provisions of Section 14(a), the SEC is considered to have "even greater discretion to require disclosure by rulemaking." *Id.*

6. Relying on this authority, the SEC has considered a number of additional disclosure requirements over the years, outlined in the 2011 Petition at pp. 2-3.

7. The Supreme Court's 2010 decision in *Citizens United v. Federal Election Comm'n*,

558 U.S. 310 (2010), freed companies to spend unlimited amounts of corporate funds on political activities on the theory such expenditures were protected political speech. At the same time, the Supreme Court recognized disclosing such spending would allow shareholders to “determine whether their corporation’s political speech advances the corporation’s interest in making profits,” *id.* at 370, thereby permitting shareholders “to react to the speech of corporate entities in a proper way.” *Id.* at 371.

8. But while the Supreme Court has acknowledged the validity and utility of corporate disclosure requirements, the SEC has yet to propose regulations that would require public companies to disclose their political spending.

9. As part of its 2013 regulatory agenda, the SEC’s Division of Corporation Finance announced it was considering “whether to recommend that the Commission issue a proposed rule to require that public companies provide disclosure to shareholders regarding the use of corporate resources for political activities.”<sup>2</sup> This rule never materialized, however, and the Agency Rule List for the Fall of 2013 issued by the SEC omitted any reference to such a rule.<sup>3</sup>

10. The SEC’s decision not to proceed with a rule requiring disclosure of corporate political spending followed intense congressional pressure. For example, during a hearing before the House Committee on Financial Services at which SEC Chairwoman Mary Jo White testified on May 16, 2013, Rep. Scott Garrett (R-NJ) pressed Chairwoman White to remove any mention

---

<sup>2</sup> SEC RIN 3235-AL36, December 12, 2012, *available at* <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201210&RIN=3235-AL36>.

<sup>3</sup> *See* SEC Agency Rule List – Fall 2013, *available at* [http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235](http://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPub=true&agencyCode=&showStage=active&agencyCd=3235).

in the SEC's Reg Flex agenda to corporate political disclosures.<sup>4</sup> In response, Chairwoman White indicated petitions to require the disclosure of political contributions were under review by the SEC's Corporation Finance Division.<sup>5</sup> By December 2013, the SEC had removed any mention of corporate political disclosure provisions from its list of planned upcoming rules.

### **Factual Background**

11. Even before *Citizens United*, shareholders increasingly were demanding greater disclosure of corporate political spending. As outlined in the 2011 Petition, a 2006 poll revealed 85 percent of shareholders believed there was a lack of transparency concerning corporate political activity.<sup>6</sup> The concern with a lack of transparency was accompanied by a corresponding increase in shareholder proposals requesting disclosure of corporate political spending.<sup>7</sup> During the 2011 proxy season, 25 percent of companies in the S&P 100 included proposals requesting disclosure of corporate political spending.<sup>8</sup>

12. Those demanding more corporate disclosure of political spending include some large institutional investors. A 2012 report from the Forum for Sustainable and Responsible Investment found between 2010 and 2012, disclosure of political spending was a top priority for

---

<sup>4</sup> Oversight of the SEC's Agenda, Operations, and FY 2014 Budget Request before the H. Comm. on Financial Services, 113th Cong. 13 (2013), *available at* <http://financialservices.house.gov/uploadedfiles/113-20.pdf>.

<sup>5</sup> *Id.*

<sup>6</sup> 2011 Petition at 4, citing Mason-Dixon Polling & Research, *Corporate Political Spending: A survey of American Shareholders 6* (2006).

<sup>7</sup> 2011 Petition at 4.

<sup>8</sup> *Id.* at 5.

institutional investors.<sup>9</sup> For example, New York State Comptroller Thomas P. DiNapoli, sole trustee of the state's \$160.7 billion pension fund,<sup>10</sup> has demanded corporations disclose their political spending.<sup>11</sup> In announcing an agreement he reached with five companies to disclose political spending in April 2013, Comptroller DiNapoli stated, "Shareholders have a right to know how companies are using corporate money for political purposes."<sup>12</sup>

13. Currently, according to the Center for Political Accountability's ("CPA") 2013 CPA-Zicklin Index ("CPA-Zicklin Index") ranking of political spending disclosure policies, 128 of the top 195 companies of the S&P 500 have posted comprehensive political spending policies on their websites, while another 55 have partial policies.<sup>13</sup> By contrast, in 2004, only a "trivial"

---

<sup>9</sup> Report on Sustainable and Responsible Investing Trends in the United States 2012, Fast Facts, Infographics, The Forum for Sustainable and Responsible Investment, *available at* <http://www.ussif.org/photogallery/top5.jpg>. *See also id.*, Executive Summary, *available at* [http://www.ussif.org/files/Publications/12\\_Trends\\_Exec\\_Summary.pdf](http://www.ussif.org/files/Publications/12_Trends_Exec_Summary.pdf).

<sup>10</sup> <https://www.osc.state.ny.us/about/response.htm>.

<sup>11</sup> Dina ElBoghdady, Some Public Companies Are Divulging More Details About Their Political Contributions, *Washington Post* (Sept. 25, 2013), *available at* [http://www.washingtonpost.com/business/economy/companies-beefing-up-their-political-spending-disclosures/2013/09/24/3531a21c-252b-11e3-b3e9-d97fb087acd6\\_story.html](http://www.washingtonpost.com/business/economy/companies-beefing-up-their-political-spending-disclosures/2013/09/24/3531a21c-252b-11e3-b3e9-d97fb087acd6_story.html).

<sup>12</sup> DiNapoli Reaches Agreement With Five Companies To Disclose Political Spending, Press Release, Office of the New York State Comptroller (Apr. 9, 2013), *available at* <https://www.osc.state.ny.us/press/releases/apr13/040913.htm>. As outlined in that Press Release, in 2011 and 2012, the New York State Fund filed 27 different shareholder resolutions seeking disclosure of political spending, and in 2012, Comptroller DiNapoli asked the SEC to engage in rulemaking to require such disclosure. *Id.*

<sup>13</sup> The 2013 CPA-Zicklin Index of Corporate Political Accountability and Disclosure, *Center for Political Accountability* (Sept. 25, 2013), at 15, *available at* <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/8047>.

number of the top 100 S&P companies had adopted political spending disclosure policies.<sup>14</sup>

14. At the same time there has been a marked increase in the demand for disclosure of corporate political spending, the amount of political spending in general has reached extraordinary heights. According to the Center for Responsive Politics, in the 2012 presidential election cycle – the first since the *Citizens United* decision was handed down – total spending was nearly \$6.3 billion, up from the nearly \$5.3 billion spent in 2008.<sup>15</sup>

15. This spending includes anonymous or “dark” money, which has poured into our elections at an alarming rate. During the 2012 election cycle, groups that do not disclose their donors, including social welfare groups and trade association, spent \$310.8 million, more than four times the \$69.2 million these same groups spent during the 2008 election cycle,<sup>16</sup> and a more than 5000 percent increase from the \$5.8 million spent in 2003-2004.<sup>17</sup>

16. Political spending by dark money groups was aided, at least in part, by contributions from public corporations. Only about nine percent of the companies analyzed on the 2013 CPA-Zicklin Index stated under their policies they did not contribute in 2012 to social welfare groups exempt under § 501(c)(4) of the Tax Code, while only seven percent stated they directed trade

---

<sup>14</sup> 2011 Petition at 7.

<sup>15</sup> Historical Elections – The Money Behind The Elections, The Center for Responsive Politics, *available at* <http://www.opensecrets.org/bigpicture/>.

<sup>16</sup> 2008 Outside Spending, by Disclosure, Excluding Party Committees, *available at* <http://www.opensecrets.org/outsidespending/disclosure.php>.

<sup>17</sup> Thomas B. Edsall, *In Defense of Anonymous Political Giving*, *New York Times* (Mar. 18, 2014) (citing 2014 Outside Spending by Group, The Center for Responsive Politics), *available at* <http://www.nytimes.com/2014/03/19/opinion/edsall-in-defense-of-anonymous-political-giving.html>.

associations not to use their contributions on election-related activities.<sup>18</sup>

17. But while public companies are spending large amounts on election-related activities, they are not disclosing the contributions they make to dark money groups. Just 26 percent of the S&P 200 companies analyzed by the CPA-Zicklin Index disclosed information about their contributions to § 501(c)(4) social welfare groups in 2013.<sup>19</sup>

18. In 2012, the insurance giant Aetna, Inc., through a filing with the National Association of Insurance Commissioners, inadvertently revealed it had made more than \$7 million in contributions to political groups, including more than \$3.3 million to the politically active American Action Network, a § 501(c)(4) group, and over \$4 million to the U.S. Chamber of Commerce.<sup>20</sup> Both groups aggressively opposed health care reform, which Aetna at least publicly supported,<sup>21</sup> and both groups spent millions of dollars to influence the 2012 elections.<sup>22</sup> These payments for political activities were not disclosed through Aetna's widely touted

---

<sup>18</sup> CPA-Zicklin Index at 14.

<sup>19</sup> *Id.*

<sup>20</sup> See <https://www.opensecrets.org/outsidespending/summ.php?cycle=2012&chrt=V&disp=O&type=U>. See also Sean P. Carr & Wayne Dalton, *Aetna Led Insurers in 2011 Lobbying Spending, Funded Pro-GOP Group*, *SNL Financial* (June 4, 2012), available at [http://www.citizensforethics.org/page/-/PDFs/Legal/Letters/6-14-12\\_Aetna\\_Letter\\_Exhibits.pdf?nocdn=1](http://www.citizensforethics.org/page/-/PDFs/Legal/Letters/6-14-12_Aetna_Letter_Exhibits.pdf?nocdn=1).

<sup>21</sup> Ana Radelat, *Ethics Group Blasts Aetna For Donations*, *Record-Journal* (Meriden, Connecticut) (June 21, 2012), available at [http://nl.newsbank.com/nl-search/we/Archives?p\\_product=MRJB&p\\_theme=mrjb&p\\_action=search&p\\_maxdocs=200&s\\_dispstring=DOCUMENT\\_ID\(13F8B232D2F1B370\)&p\\_field\\_advanced-0=document\\_id&p\\_text\\_advanced-0=\(13F8B232D2F1B370\)&xcal\\_numdocs=20&p\\_perpage=10&p\\_sort=YMD\\_date:D&xcal\\_useweights=no](http://nl.newsbank.com/nl-search/we/Archives?p_product=MRJB&p_theme=mrjb&p_action=search&p_maxdocs=200&s_dispstring=DOCUMENT_ID(13F8B232D2F1B370)&p_field_advanced-0=document_id&p_text_advanced-0=(13F8B232D2F1B370)&xcal_numdocs=20&p_perpage=10&p_sort=YMD_date:D&xcal_useweights=no).

<sup>22</sup> Carr & Dalton, *SNL Financial* (June 4, 2012).

voluntary disclosure policy, angering shareholders and causing Aetna's ranking on the 2013 CPA-Zicklin Index to fall.<sup>23</sup>

19. Although increasing numbers of public companies are adopting voluntary political spending disclosure policies in response to shareholder pressure, a new study by CREW<sup>24</sup> reveals many of those companies are failing to meet their promises of transparency. Problems uncovered by CREW fall into three general categories: (1) discrepancies between what companies disclosed in their reports of political contributions and what organizations receiving contributions from the companies reported to the Internal Revenue Service ("IRS"); (2) contradictions between companies' stated policies governing political contributions and their actual practices; and (3) confusing policies and reports.

#### *Discrepancies*

20. Out of 60 companies,<sup>25</sup> CREW found significant discrepancies between corporate disclosure reports issued by 25 companies and contributions disclosed on tax forms filed by political groups organized under § 527 of the Tax Code.<sup>26</sup>

21. CREW's research also revealed § 527 organizations reported receiving contributions

---

<sup>23</sup> CPA-Zicklin Index at 30. The Index singled out Aetna's disclosures in a stinging footnote. *Id.*

<sup>24</sup> For the Commission's convenience a copy of CREW's report, *The Myth of Corporate Disclosure Exposed* ("CREW Report"), is enclosed as Exhibit A.

<sup>25</sup> In conducting its study, CREW reviewed corporate political contributions to groups organized under § 527 of the Tax Code that report to the IRS from the 27 companies given the highest overall rankings in the 2013 CPA-Zicklin Index, as well as 33 other public companies meeting certain specified criteria. CREW Report at 5.

<sup>26</sup> CREW Report at 1.



from 20 companies that failed to disclose contributions to those organizations, despite the companies either having claimed to disclose such contributions or having claimed not to make such contributions at all.<sup>27</sup> The discrepancies between the amounts companies voluntarily disclosed they had contributed and the amounts § 527 groups reported to the IRS they had received totaled more than \$3.1 million between 2011 and 2013.<sup>28</sup>

22. As an example, Microsoft's stated policy with respect to transparency commits the company to "publicly disclos[ing] all contributions made and received in reports filed with the Federal Election Commission and the various state campaign finance commissions, as required by law."<sup>29</sup> Microsoft further pledges to "publish[] a semi-annual list of election campaign expenditures," which shall include, *inter alia*, expenditures made to § 501(c)(4) groups.<sup>30</sup> According to Microsoft, since July 1, 2005, it "has no made no corporate contributions to any non-candidate or non-party political committee organized under section 527 of the Internal Revenue Code."<sup>31</sup>

23. In fact, however, Microsoft's disclosure reports omitted nearly \$1 million in

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> Microsoft, Principles and Policies for Guiding Microsoft's Participation in the Public Policy Process in the United States at 2, available at <https://www.microsoft.com/about/corporatecitizenship/en-us/working-responsibly/principled-business-practices/integrity-governance/political-engagement/>.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*, Compliance in Political Spending.

contributions the company made to § 527 organizations between 2011 and 2013.<sup>32</sup> In 2011 alone Microsoft made contributions to the Democratic Attorneys General Association (“DAGA”), the Democratic Governors Association (“DGA”), the Democratic Legislative Campaign Committee (“DLCC”), the Democratic Lieutenant Governors Association (“DLGA”), and the Republican Governors Association (“RGA”) totaling \$508,350, none of which the company disclosed on its political disclosure reports.<sup>33</sup>

24. This trend continued in 2012, when Microsoft made contributions to the DAGA, DGA, and RGA totaling \$465,350 that it did not disclose on its political disclosure reports.<sup>34</sup>

25. Similarly, the published Corporate Policy Procedure for Pfizer, Inc. “requires all PAC and corporate political contributions be compiled and published semiannually in the PAC and Corporate Political Contributions Report available at [www.pfizer.com](http://www.pfizer.com). Further, Pfizer promises to “disclose the information we receive from our trade associations in the semiannual report.”<sup>35</sup>

26. CREW’s study reveals serious noncompliance with Pfizer’s stated disclosure policy. Between 2011 and 2013, CREW found discrepancies totaling more than \$395,000 between what the company voluntarily disclosed in its reports and what § 527 groups reported to the IRS,

---

<sup>32</sup> CREW Report at 24.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Pfizer, Public Policy Engagement and Political Participation, Pfizer’s Disclosure Policies, at 3, available at [http://www.pfizer.com/files/public\\_policy\\_political\\_participation\\_0313.pdf](http://www.pfizer.com/files/public_policy_political_participation_0313.pdf).

including under-disclosed contributions of \$310,650.<sup>36</sup>

27. Similar discrepancies were found with Prudential Insurance Co. In its 2011 Political Activities and Contributions Report, the company promised it was providing “detailed information on the Company sponsored political contributions and annual association dues, assessments and contributions to trade associations exceeding \$50,000.”<sup>37</sup> Prudential’s 2012 Political Activities and Contributions Report reiterated this commitment and specified it also would disclose contributions to § 527 groups.<sup>38</sup> In 2011 and 2012, however, the differences between those contributions the company included in its report and the contributions § 527 groups reported to the IRS they had received from Prudential totaled more than \$211,000.<sup>39</sup>

#### *Contradictions Between Policies And Contributions*

28. Although many companies have stated published policies governing their political giving, some of the companies examined by CREW make contributions to § 527 organizations that conflict with their stated policies. For example, Ford Motor Company’s policy states the company “does not make contributions to political candidates or political organizations nor otherwise employ Company resources for the purpose of helping elect candidates to public

---

<sup>36</sup> CREW Report at 27.

<sup>37</sup> Prudential, 2011 Political Activities and Contributions Report, at 3, *available at* [http://www.prudential.com/media/managed/documents/public\\_site/PAC\\_Annual\\_Report\\_11-Final.pdf](http://www.prudential.com/media/managed/documents/public_site/PAC_Annual_Report_11-Final.pdf).

<sup>38</sup> Prudential, 2012 Political Activities and Contributions Report, at 4, *available at* [http://www.prudential.com/documents/public/PAC\\_Annual\\_Report\\_12-Final.pdf](http://www.prudential.com/documents/public/PAC_Annual_Report_12-Final.pdf).

<sup>39</sup> CREW Report at 29.

office, even when permitted by law.”<sup>40</sup> Ford cited to this policy in fending off a 2011 shareholder proposal that would have required the company to publish in newspapers a detailed statement of all political contributions made the previous year,<sup>41</sup> as well as a 2010 proposal that would have required Ford to submit semi-annual reports on its political contributions and expenditures.<sup>42</sup>

29. Contrary to its published policy and statements to shareholders, however, between 2011 and 2013, Ford made contributions to at least five § 527 organizations that reported those contributions to the IRS, totaling \$200,399.<sup>43</sup>

30. Aetna likewise pointed to its political spending disclosure reports posted on the company’s website as a reason why shareholder disclosure proposals offered in 2012 and 2013 should be defeated. Because Aetna’s political contribution reports are riddled with inaccuracies, CREW on behalf of an Aetna shareholder filed a lawsuit against the company for publishing false and misleading proxy statements in violation of Section 14(a) of the Securities Exchange Act. *See Silberstein v. Aetna, Inc.*, Civ. No. 13-cv-8759 (S.D.N.Y.).

31. Similarly, FedEx has a published policy on political contributions stating the company “does not make corporate contributions to groups organized under section 527 of the

---

<sup>40</sup> Ford, Participation in the Policy-Making Process, 2011-2012, *available at* <http://corporate.ford.com/microsites/sustainability-report-2011-12/blueprint-governance-public-participation>.

<sup>41</sup> Ford Motor Company, Notice of 2011 Annual Meeting of Shareholders and Proxy Statement, April 1, 2011, at 72-73, *available at* [http://corporate.ford.com/doc/ir\\_2011\\_proxy.pdf](http://corporate.ford.com/doc/ir_2011_proxy.pdf).

<sup>42</sup> Ford Motor Company, Notice of 2010 Annual Meeting of Shareholders and Proxy Statement, April 1, 2010, at 78-79, *available at* [http://corporate.ford.com/doc/2010\\_proxy.pdf](http://corporate.ford.com/doc/2010_proxy.pdf).

<sup>43</sup> CREW Report at 19.

Internal Revenue Code, except to the organizational committees of the Democratic and Republican national party conventions and the annual Democratic and Republican Governor's conferences."<sup>44</sup> FedEx reiterated this policy in a proxy statement opposing a shareholder proposal in 2013 that would have required the company to disclose all political spending.<sup>45</sup>

32. Contrary to its own touted policy, however, FedEx made contributions to at least three additional § 527 organizations between 2011 and 2013, totaling \$63,400.<sup>46</sup>

33. Other companies that do not follow their stated policies include Intel, which claims to "generally . . . not make financial contributions to '527' organizations" except those that are "principal campaign committees or political parties regulated by the FEC or state campaign finance laws."<sup>47</sup> Contrary to this policy, in 2012 Intel made political contributions to the DGA and RGA totaling \$35,000.<sup>48</sup>

34. Likewise, as part of its published statement on political expenditures, Boeing claimed in 2012 and 2013 that it did not use corporate funds for political contributions to, among others, "section 527 entities or Super PACs, or for electioneering communications or independent

---

<sup>44</sup> FedEx, Policy on Political Contributions, *available at* <http://investors.fedex.com/phoenix.zhtml?c=73289&p=irol-govpolitical>.

<sup>45</sup> FedEx Corporation, Notice of Annual Meeting of Stockholders, August 12, 2013, at 97-99, *available at* <http://investors.fedex.com/phoenix.zhtml?c=73289&p=irol-investorkit>.

<sup>46</sup> CREW Report at 18.

<sup>47</sup> Intel, Intel Political Accountability Guidelines, *available at* <http://www.intel.com/content/www/us/en/policy/policy-political-accountability.html>.

<sup>48</sup> CREW Report at 21.

expenditures.”<sup>49</sup> In both year’s statements, Boeing also claimed it would disclose any corporate political contributions on the company’s website.<sup>50</sup> In fact, however, in 2012 Boeing contributed \$25,000 each to the DGA and RGA that it failed to disclose either on its website or in its 2012 PAC political disclosure reports.<sup>51</sup> In 2013, Boeing under-reported its contributions to the DGA and RGA.<sup>52</sup>

### *Confusing Policies And Reports*

35. A pervasive problem among the companies examined by CREW is a lack of uniformity and clarity in corporate disclosure policies. Some companies’ policies are written in ways likely to mislead or confuse investors and shareholders who are not well versed in campaign finance matters. Other policies permit companies to keep some contributions secret, while promoting an appearance of transparency.

36. Wells Fargo, for example, has a corporate political spending policy that states:

Wells Fargo does not use company funds for any candidate campaign funds, including candidate campaign committees, political parties, caucuses, or independent expenditure committees. The prohibition against using Wells Fargo company funds for electioneering activities includes, but is not limited to, groups organized under IRS Sections

---

<sup>49</sup> Boeing, Statement on Federal, State and Local Political Expenditures, *available at* [http://web.archive.org/web/20130812024407/http://www.boeing.com/boeing/aboutus/govt\\_ops/pol\\_expend.page](http://web.archive.org/web/20130812024407/http://www.boeing.com/boeing/aboutus/govt_ops/pol_expend.page); Boeing, Statement on Federal, State and Local Political Expenditures, *available at* [http://www.boeing.com/boeing/aboutus/govt\\_ops/pol\\_expend.page](http://www.boeing.com/boeing/aboutus/govt_ops/pol_expend.page).

<sup>50</sup> 2012 and 2013 Statements on Federal, State and Local Political Expenditures.

<sup>51</sup> CREW Report at 12.

<sup>52</sup> *Id.*

501(c)(4), 501(c)(6), or 527.<sup>53</sup>

Between 2011 and 2013, Wells Fargo made contributions of more than \$140,000 to § 527 organizations,<sup>54</sup> a practice that seems to be in conflict with its stated policy. A close reading of that policy reveals the restriction on contributing to § 527 organizations applies only to “electioneering activities,” a distinction that likely will elude those not well versed in campaign finance.

37. Moreover, the publicly available corporate political spending information often is difficult to access and use, especially in an aggregate form. For example, Microsoft posts its political contribution reports in multiple PDF documents on its website, broken down by type of donations (*e.g.*, corporate contributions or PAC donations) and type of recipient (*e.g.*, PAC contributions to federal and state-level candidates). Anyone looking for a complete overview of Microsoft’s political spending for 2012 must wade through nine separate documents.<sup>55</sup>

38. Similarly, Altria discloses its political spending on an interactive map on its website.<sup>56</sup> To view all of Altria’s contributions, users must either click through the entire map twice for each year or switch views using a drop-down menu that lists states, other than the

---

<sup>53</sup> Wells Fargo Government Relations, Corporate Political Spending, *available at* <https://www.wellsfargo.com/about/csr/governmentrelations>.

<sup>54</sup> CREW Report at 2.

<sup>55</sup> All of Microsoft’s reports are available at <https://www.microsoft.com/about/corporatecitizenship/en-us/working-responsibly/principled-business-practices/integrity-governance/political-engagement/>.

<sup>56</sup> That map is available at <http://www.altria.com/About-Altria/Government-Affairs/disclosures-transparency/Pages/Political-Contributions.aspx>.

District of Columbia, which is accessible only through the map view.<sup>57</sup>

39. Further complicating the picture, policies vary widely as to what each company reports and how they report it. Moreover, as explained above, many companies do not comply with their own policies, requiring a search of publicly available data maintained by the Federal Election Commission and the IRS to ferret out unreported or under-reported contributions. The problem is especially acute for those corporations making contributions to dark money groups, where voluntary disclosure by the corporations provides the only access to this information.

### **Need For SEC Regulations**

40. As these facts illustrate, leaving disclosure of corporate political spending to the discretion of individual companies has deprived investors, shareholders, and the public of information that would help them assess whether those contributions are in the best interest of these corporations and advance the interests of corporate democracy. The many problems that voluntary disclosure policies have created demonstrate conclusively they are no substitute for regulations that would provide a clearly delineated, unambiguous, and uniform set of disclosure requirements for all public companies.

41. To be clear, not all corporate disclosure policies miss the mark. CREW's study revealed there are companies that appear to comply with their own disclosure policies and accurately disclose contributions to § 527 organizations or for which there were only small discrepancies.<sup>58</sup> But the overall results of CREW's study, which looked at only a small subset of corporate political contributions, raise troubling questions about the limited effectiveness of

---

<sup>57</sup> *Id.*

<sup>58</sup> CREW Report at 3.



voluntary disclosure policies. To the extent the SEC deferred action in the wake of the growing number of such policies that have emerged in the past few years, the time has come for the SEC to take up this issue in a formal rulemaking procedure.

### **Conclusion**

42. Accordingly, petitioner CREW requests that the SEC act immediately to initiate a rulemaking to require public companies to disclose to shareholders the use of corporate resources for political activities.

Respectfully submitted,



Anne L. Weismann  
Melanie Sloan  
Citizens for Responsibility and Ethics  
in Washington  
1400 Eye Street, N.W., Suite 450  
Washington, D.C. 20005

April 15, 2014