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FOR JUSTICE

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March 10, 2014

*Via electronic mail: PerformancePlanning@sec.gov*

Ms. Mary Jo White  
Chair, Securities and Exchange Commission  
100 F. Street, Northeast  
Washington, DC 20549

*Re: Draft 2014–2018 Strategic Plan for the Securities and Exchange Commission*

Dear Chair White:

The Brennan Center for Justice at NYU School of Law<sup>1</sup> respectfully submits these comments on the Draft 2014–2018 Strategic Plan for the Securities and Exchange Commission.<sup>2</sup> We ask that the SEC include rulemaking regarding the disclosure of political spending in its Strategic Plan.

Recent years' proxy seasons have seen a large number of shareholder proposals on the topic of transparency about corporate political expenditures. The Petition to require public companies to disclose to shareholders the use of corporate resources for political activities (File No. 4-637) has received three-quarters of a million comments, virtually all in support of rulemaking. These developments are consistent with a marked trend over the past decade toward both greater investor support for disclosure of political spending and the adoption of more transparent practices by the largest American businesses.

Transparency rightfully takes center stage in the SEC's mission and in the Draft Strategic Plan. Disclosure of political spending is necessary to allow investors to make informed investment decisions and to assess the risks associated with engaging in politics or specific political giving. Disclosure also helps to ensure a well-functioning market by shedding light on companies'

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<sup>1</sup> The Brennan Center is a non-partisan public policy and law institute that focuses on fundamental issues of democracy and justice. The Brennan Center's Money and Politics project works to reduce the real and perceived influence of special interest money on our democratic values. Project staff defend federal, state, and local campaign finance and disclosure laws in court around the country, and provide legal guidance to campaign finance reformers through counseling, testimony, and public education.

<sup>2</sup> U.S. Securities & Exchange Commission, Strategic Plan: Fiscal Years 2014-2018 Draft for Comment, <http://www.sec.gov/about/sec-strategic-plan-2014-2018-draft.pdf>.

attempts to secure market advantage through political influence, which can lead to a suboptimal distribution of resources. Transparency makes it more likely that stock prices accurately reflect corporate value.

In addition, transparency benefits investors in that it allows them to align their investments with their values. Some shareholders have an interest in keeping their money from going to candidates or causes that they oppose. They will only be able to protect this expressive and associative interest if they know about firms' political giving.

### **Investors Are Calling for Disclosure**

Importantly, a broad range of investors is interested in information about companies' political expenditures, and the SEC should take into account the investor community's calls for disclosure. The Petition to require public companies to disclose to shareholders the use of corporate resources for political activities now has an astonishing number of comments, and investors are a critical part of this enormous outpouring of support. The SEC has received comments calling for disclosure from a group of forty mutual fund and institutional asset managers that together manage more than \$690 billion,<sup>3</sup> from state treasurers,<sup>4</sup> and from the Maryland State Retirement Agency,<sup>5</sup> along with other investors.<sup>6</sup> Mutual fund support for disclosure of corporate political activity reached new highs in last year's proxy season.<sup>7</sup>

In the 2012 proxy season, proposals regarding political spending were more common than any other type of proposal.<sup>8</sup> Several disclosure proposals have achieved votes of over 40 percent in recent years, including the 66 percent vote in favor of disclosure at CF Industries, an Illinois

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<sup>3</sup> Letter from Iain Richards, Regional Head of Corporate Governance, Aviva Investors, et al., to Elizabeth M. Murphy, Secretary, SEC (Nov. 1, 2011), <http://www.sec.gov/comments/4-637/4637-11.pdf>.

<sup>4</sup> Letter from Pat Quinn, Illinois Governor; Janet Cowell, North Carolina State Treasurer; Tom DiNapoli, State Comptroller; Bill Lockyer, California State Treasurer; Rob McCord, Pennsylvania State Treasurer; Bill De Blasio, New York City Public Advocate; Wendy Greuel, Los Angeles City Controller; Rep. William A. Current, Sr., North Carolina House of Representatives; Rep. James Pilliod, New Hampshire House of Representatives; Commissioner Toni Pappas, Hillsborough County, New Hampshire to Elizabeth M. Murphy, Secretary, SEC (Jan. 19, 2012), <http://www.sec.gov/comments/4-637/4637-84.pdf>; Letter from Ted Wheeler, Oregon State Treasurer, to Elizabeth Murphy, Secretary, SEC (Oct. 6, 2011), <http://www.sec.gov/comments/4-637/4637-14.pdf>. In addition, a representative from CalPERS has met with the SEC in support of the petition. *See* Memorandum from the Division of Corporation Finance regarding a September 20, 2013, meeting with representatives of Public Citizen, AFSCME, CalPERS, AFL-CIO, and Domini Social Investments LLC.

<sup>5</sup> Letter from R. Dean Kenderdine, Exec. Dir., Maryland State Retirement & Pension System, to Elizabeth M. Murphy, Secretary, SEC (Oct. 14, 2011), [www.sec.gov/comments/4-637/4637-10.pdf](http://www.sec.gov/comments/4-637/4637-10.pdf).

<sup>6</sup> *See, e.g.*, Letter from Benjamin Lovell, President, Zevin Asset Management, to Elizabeth M. Murphy, Secretary, SEC (May 17, 2013), <http://www.sec.gov/comments/4-637/4637-1791.pdf>; Letter from Ben Chute, Member, Advisory Comm. on Socially Responsible Investing, Middlebury College, to Elizabeth M. Murphy, Secretary, SEC (May 7, 2013), <http://www.sec.gov/comments/4-637/4637-1708.pdf>.

<sup>7</sup> CTR. FOR POLITICAL ACCOUNTABILITY, CORPORATE POLITICAL SPENDING AND THE MUTUAL FUND VOTE (2013), <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/8174>.

<sup>8</sup> Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923, 938 (2013).

fertilizer company, which resulted in a new disclosure policy.<sup>9</sup> The average proxy season vote in favor of shareholder resolutions for political disclosure and accountability last year was 32 percent.<sup>10</sup>

### **Voluntary Policies Show Disclosure Is Feasible**

There has been a clear trend toward voluntary disclosure among the largest American companies over the last decade, showing that it is entirely feasible for businesses to accommodate shareholders' calls for information about political spending.<sup>11</sup> In 2012, shareholder resolutions concerning political disclosure and accountability led to 13 agreements by companies.<sup>12</sup> Sixteen companies adopted new political disclosure and accountability policies in 2013.<sup>13</sup>

The CPA-Zicklin Index reveals that many of the top 200 companies in the S&P 500 voluntarily disclose more than is required by law.<sup>14</sup> Forty-three percent of companies disclose payments to trade associations, which may in turn make political expenditures, and another 14 percent ask that trade associations not use their funds for politics. Thirty-five percent either disclose payments to politically active tax-exempt organizations or have a policy against such payments.

### **Responsible Investment Requires Information About Risks**

Responsible investors recognize that their investment decisions must be well-informed, and shareholders have an interest in knowing what their money is being spent on. Since political spending entails risk to the bottom line, investors benefit from having information about it. The risk of corporate political spending includes, of course, the possibility that an opposed candidate will win the election and the risk that a contribution will generate bad publicity.<sup>15</sup> As a general

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<sup>9</sup> Dina ElBoghdady, *Shareholders Press Companies to Disclose More About Political Spending*, WASH. POST., May 17, 2013, [http://articles.washingtonpost.com/2013-05-17/business/39335887\\_1\\_political-spending-sustainable-investments-institute-bruce-freed](http://articles.washingtonpost.com/2013-05-17/business/39335887_1_political-spending-sustainable-investments-institute-bruce-freed); Letter from Heidi Welsh, Exec. Dir., Sustainable Investments Institute, to Elizabeth M. Murphy, Secretary, SEC, Oct. 30, 2012, <http://www.sec.gov/comments/4-637/4637-1149.pdf> (“Twenty votes at 14 companies since 2010 have been above 40 percent and two have earned a majority of shares cast for and against, at Sprint Nextel in 2011 and WellCare Health Plans in 2012.”).

<sup>10</sup> CTR. FOR POLITICAL ACCOUNTABILITY NEWSLETTER, June 2013, <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/7933>.

<sup>11</sup> Lucian A. Bebchuk & Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 GEO. L.J. 923, 946 (2013).

<sup>12</sup> CTR. FOR POLITICAL ACCOUNTABILITY NEWSLETTER, June 2012, <http://politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/6785>.

<sup>13</sup> CTR. FOR POLITICAL ACCOUNTABILITY, SHAREHOLDER RESOLUTIONS ON CORPORATE POLITICAL SPENDING DISCLOSURE & ACCOUNTABILITY (2013), <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/8204>.

<sup>14</sup> CTR. FOR POLITICAL ACCOUNTABILITY, THE 2013 CPA-ZICKLIN INDEX OF CORPORATE POLITICAL ACCOUNTABILITY AND DISCLOSURE: HOW LEADING COMPANIES NAVIGATE POLITICAL SPENDING IN THE WAKE OF *CITIZENS UNITED* (2013), <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/8047>.

<sup>15</sup> See Brody Mullins & Ann Zimmerman, *Target Discovers Downside to Political Contributions*, WALL ST. J., Aug. 7, 2010, at A2, <http://online.wsj.com/article/SB10001424052748703988304575413650676561696.html>.

matter, there is evidence that political activity correlates negatively with shareholder value.<sup>16</sup> Researchers have found that politically connected firms have lower value,<sup>17</sup> show worse financial performance, and are more likely to get government bailouts.<sup>18</sup> One study examining almost a thousand S&P 1500 firms for 10 years found that political spending was negatively associated with market performance and that cumulative political expenditures make both market and accounting performance worse.<sup>19</sup> Of course, there is nothing inherently wrong with businesses taking risks, but shareholders need to know about risky behavior in order to make well-informed investment decisions.

As the Supreme Court pointed out when it upheld a federal law requiring disclosure of political spending in *Citizens United v. FEC*, disclosure allows shareholders to “determine whether their corporation’s political speech advances the corporation’s interest in making profits.”<sup>20</sup> Companies that believe their political spending benefits their bottom lines should not oppose disclosure of that spending. If the activity is beneficial to corporate value, publicizing it will only attract investors who agree with the strategy.

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The trends of recent years have shown that investor support for information about corporate political spending is high, and the country’s biggest companies are moving to adopt disclosure and accountability policies in ever greater numbers. The best corporate governance requires well-informed shareholders. A company’s decision to engage in political spending should be made transparently and with shareholder value in mind, which is why disclosure policies are good for investors, companies, and the market. The Brennan Center respectfully recommends that rulemaking for transparency around political spending should be a part of the SEC’s 2014–2018 Strategic Plan.

Respectfully submitted,



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Counsel  
Democracy Program

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<sup>16</sup> John C. Coates IV, *Corporate Politics, Governance and Value Before and After Citizens United*, 9 J. EMPIRICAL LEGAL STUD. 657 (2012).

<sup>17</sup> See, e.g., Ashley N. Newton & Vahap B. Uysal, *The Impact of Political Connectedness on Cash Holdings: Evidence from Citizens United* (unpublished paper, revised 2013), <https://www.ou.edu/content/dam/price/Finance/CFS/paper/pdf/NewtonPaper.pdf>.

<sup>18</sup> Mara Faccio, Ronald W. Masulis & John J. McConnell, *Political Connections and Corporate Bailouts*, 61 J. FIN. 2597 (2006).

<sup>19</sup> Michael Hadani & Douglas A. Schuler, *In Search of El Dorado: The Elusive Financial Returns on Corporate Political Investments*, 34 STRATEGIC MGMT. J. 165 (2013).

<sup>20</sup> 558 U.S. 310, 370 (2010).