No. 10-3126

In the
United States Court of Appeals
for the Eighth Circuit

MINNESOTA CITIZENS CONCERNED FOR LIFE, INC.,
THE TAXPAYERS LEAGUE OF MINNESOTA and
COASTAL TRAVEL ENTERPRISES, LLC,

Plaintiffs-Appellants,

v.

LORI SWANSON, Minnesota Attorney General, in her official capacity;
BOB MILBERT, JOHN SCANLON, TERRI ASHMORE, HILDA BETTERMANN,
FELICIA BOYD and GREG MCCULLOUGH, Minnesota Campaign Finance and
Public Disclosure Board Members, in their official capacities; RAYMOND KRAUSE,
Chief Administrative Law Judge of the Minnesota Office of Administrative Hearings,
in his official capacity; ERIC LIPMAN, Assistant Chief Administrative Law Judge
of the Minnesota Office of Administrative Hearings, in his official capacity;
MANUEL CERVANTES, BEVERLY HEYDINGER, RICHARD LUIS,
STEVE MIHALCHICK, BARBARA NEILSON and KATHLEEN SHEEHY,
Administrative Law Judges of the Minnesota Office of Administrative Hearings,
in their official capacities; and MICHAEL FREEMAN, Hennepin County Attorney,
in his official capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the District of Minnesota-Minneapolis, No. 0:10-cv-02938-DWF.
The Honorable **Donovan W. Frank**, U.S. District Judge Presiding.

BRIEF OF *AMICUS CURIAE* THE BRENNAN CENTER FOR JUSTICE AT NYU SCHOOL OF LAW IN SUPPORT OF DEFENDANTS-APPELLEES

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CORPORATE DISCLOSURE STATEMENT

The Brennan Center certifies that it has no parent corporation and that it does not issue stock and that therefore no publicly held company owns 10% or more of its stock.

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INTEREST OF *AMICUS CURIAE*

The Brennan Center for Justice at New York University School of Law ("Brennan Center") is a non-partisan public policy and law institute that focuses on the fundamental issues of democracy and justice. The 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, public finance, and disclosure laws in courts around the country, and provide legal guidance to state and local campaign finance reformers through counseling, testimony, and public education.

This brief is filed with the consent of the parties. Pursuant to Federal Rule of Appellate Procedure 29(c)(5), the Brennan Center affirms that no counsel from a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *Amicus* and its counsel made such a monetary contribution.

SUMMARY OF ARGUMENT

The Brennan Center respectfully submits this *amicus* brief in support of Defendants-Appellees. The Brennan Center fully endorses the arguments set forth by Appellees, who have accurately characterized the relevant laws for the Court and thoroughly rebutted the Appellants' legal claims. As the District Court found

below, Minnesota law – by freely permitting corporate independent expenditures; providing for the disclosure of those expenditures; and retaining limits on corporate contributions in order to combat corruption and the appearance of corruption – is plainly constitutional and fully comports with Supreme Court precedent, including *Citizens United v. FEC*, 130 S. Ct. 876 (2010).

Although this interlocutory appeal should be easily rejected by the Court, the Brennan Center submits this *amicus* brief to draw the Court's attention to the First Amendment interests of voters and corporate shareholders in the campaign finance disclosure laws challenged in this litigation. The benefits of robust disclosure laws were extolled by the Supreme Court in *Citizens United*, and are well-documented in Minnesota and nationwide. This Court should endorse Minnesota's efforts to ensure that the voting public receives the information it needs to fully evaluate political speech during election campaigns, and that corporate shareholders receive the information they need to ensure corporate accountability.

ARGUMENT

I. As the *Citizens United* Court Reaffirmed, the Disclosure of Money in Politics Advances Significant Public Interests.

As the Supreme Court has repeatedly recognized, the ultimate goal of First Amendment protection is to enable the process of democratic deliberation that is the foundation of this republic:

> Speech is an essential mechanism of democracy, for it is the means to hold officials accountable to the people. The right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.

Citizens United, 130 S. Ct. at 898 (citations omitted); *see also Buckley v. Valeo*, 424 U.S. 1, 14-15 (1976) ("In a republic where the people are sovereign, the ability of the citizenry to make informed choices among candidates for office is essential."). Thus, the asserted constitutional rights of the plaintiff corporations are not the only constitutional interests at issue in this dispute. The Court should also give due regard to the informational interests of voters in determining who is spending to influence the outcome of elections. Accordingly, this case, like all cases concerning the regulation of political spending, is one where "constitutionally protected interests lie on both sides of the legal equation." *Nixon v. Shrink Mo. Gov't PAC*, 528 U.S. 377, 400 (2000) (Breyer, J., concurring). Here, there is a considerable public interest in ensuring the transparency of money in Minnesota state politics.

In recognition of these interests, the Supreme Court has consistently upheld robust campaign finance disclosure regimes. *See Buckley*, 424 U.S. at 84; *Buckley v. Am. Constitutional Law Found.* (*Buckley II*), 525 U.S. 182, 202-03 (1999); *McConnell v. FEC*, 540 U.S. 93, 201-02 (2003); *Citizens United*, 130 S. Ct. at 916; *see also Doe v. Reed*, 130 S. Ct. 2811, 2821 (2010) (upholding law permitting

disclosure of ballot petition signatures). The Court has repeatedly recognized that disclosure laws serve compelling governmental interests in "providing the electorate with information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions." *McConnell*, 540 U.S. at 196; *see also Buckley*, 424 U.S. at 83-84.[1]

Plaintiffs attempt to distort this case law by asserting that Supreme Court precedent – which has consistently upheld campaign finance disclosure provisions – should be read to permit *only* the specific disclosure provisions that the Court has upheld. *See* Appellants' Br. 27. Specifically, Plaintiffs falsely claim that *Citizens*

[1] The lower federal courts have followed the Supreme Court's lead and consistently upheld the constitutionality of disclosure laws. These cases show no evidence of the distinction between "event-driven" and "PAC-style" reporting requirements that Plaintiffs attempt to draw. Instead, these cases have consistently upheld the constitutionality of ongoing reporting requirements like those created by Minnesota law. *See, e.g.*, *SpeechNow.org v. FEC*, 599 F.3d 686, 697 (D.C. Cir. 2010) (upholding ongoing disclosure requirements for organization making independent expenditures); *Human Life of Wash., Inc. v. Brumsickle*, 624 F.3d 990, 1012 (9th Cir. 2010) (upholding Washington's political committee financial disclosure requirements); *Alaska Right to Life Comm. v. Miles*, 441 F.3d 773, 790-92 (9th Cir. 2006) (upholding Alaska's registration and financial reporting requirements for all groups, including small nonprofit political organizations), *cert. denied*, 549 U.S. 886 (2006); *Ctr. for Individual Freedom v. Carmouche*, 449 F.3d 655, 662-64 (5th Cir. 2006) (upholding Louisiana's Campaign Finance Disclosure Act requiring reporting of contributions and expenditures by nonprofit, nonpartisan corporation), *cert. denied*, 549 U.S. 1112 (2007); *Nat'l Org. for Marriage v. McKee*, No. 09-538, __ F. Supp. 2d __, 2010 WL 3270092, at *9-10 (D. Me. Aug. 19, 2010) (upholding Maine's political committee financial disclosure requirements).

United "struck" certain disclosure requirements, Appellants' Br. 27, when in fact the Court fully upheld the disclaimer and disclosure regime challenged in that case, *Citizens United*, 130 S. Ct. at 913-16.[2] In doing so, the Court explained that "[d]isclaimer and disclosure requirements may burden the ability to speak, but they impose no ceiling on campaign-related activities, and do not prevent anyone from speaking." *Id*., 130 S. Ct. at 914 (citations and internal quotation marks omitted). And, the Court made clear that disclosure of money in politics is a necessary component of our electoral process:

> The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.

Id., 130 S. Ct. at 916.

Minnesota appropriately responded to the Court's directive: it promptly changed its law to permit corporate independent expenditures, while simultaneously ensuring that these expenditures are made with the transparency called for by *Citizens United*. *See* Minn. Stat. § 10A.12 subd. 1a & § 211B.15, subd. 3 (permitting corporations to make independent expenditures).

[2] Although the *Citizens United* Court struck down long-standing federal statutes prohibiting corporations and labor unions from engaging in certain independent expenditures, the Court *upheld* the disclosure of independent expenditures by a nearly-unanimous vote of 8 to 1.

Under Minnesota law, and in accordance with *Citizens United*, a corporation may now support independent political expenditures in one of two ways: it may contribute to an existing independent expenditure political committee or fund, or it may make its own independent expenditures. If a corporation contributes to an independent expenditure committee or fund, then its contributions will be publicly disclosed so that voters and shareholders can adequately review that political act. The disclosure law challenged here ensures that the public has a similar understanding of a corporation's own independent political spending.

As the State Appellees have argued to the Court, the challenged disclosure laws serve Minnesota's interest in (1) providing the electorate with information; (2) deterring corruption and the appearance of corruption; and (3) gathering the data necessary to enforce state campaign finance laws. *See* State Appellees' Br. 20-23. The remainder of this brief will focus on the first of those interests – the public's informational interest in knowing who is funding political speech. This information is critical for voters to make informed decisions about political candidates, and for shareholders to hold corporations responsible for political expenditures.

II. Minnesota's Disclosure Law Serves Voters' Substantial Interest in Information about Political Spending.

As described by the *Buckley* Court, disclosure of financial contributions and spending "allows voters to place each candidate in the political spectrum more

precisely than is often possible solely on the basis of party labels and campaign speeches," and helps "facilitate predictions of future performance in office." 424 U.S. at 66-67. Voters are also entitled to consider whether they generally agree with the spenders' viewpoints, or with those who fund an independent expenditure organization. This is necessary "so that the people will be able to evaluate the arguments to which they are being subjected." *Citizens United*, 130 S. Ct. at 915 (quoting *First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 792 n.32 (1978)); *see also Citizens Against Rent Control v. City of Berkeley*, 454 U.S. 290, 298 (1981) ("[T]here is no risk that the . . . voters will be in doubt as to the identity of those whose money supports or opposes a given ballot measure since contributors must make their identities known.").

Minnesota voters have an interest in the challenged disclosure provisions that is identical to the voters' informational interest in the federal disclosure requirements that have been repeatedly upheld by the Supreme Court. In *McConnell*, for example, relying upon the extensive factual record that had been developed in the lower court, the Court detailed the abuse that was targeted by the challenged federal disclosure regime. As the Court explained, organizations had regularly funded advertisements designed to influence elections while concealing their identities from the public. The Court quoted the District Court's wry observation that "Plaintiffs never satisfactorily answer the question of how

'uninhibited, robust, and wide-open' speech can occur when organizations hide themselves from the scrutiny of the voting public," and characterized the position before it as ignoring "the competing First Amendment interests of individual citizens seeking to make informed choices in the political marketplace." *McConnell*, 540 U.S. at 197 (quoting *McConnell v. FEC*, 251 F. Supp. 2d 176, 237 (2003)). Ultimately, the *McConnell* Court upheld the disclosure requirements – as in *Citizens United*, by an 8 to 1 vote – both because they do not limit speech and because they "inform[] the public about various candidates' supporters before election day." *Id.* at 201.

Similarly, in *Bellotti*, the Supreme Court declared that "the people in our democracy are entrusted with the responsibility for judging and evaluating the relative merits of conflicting arguments. They may consider, in making their judgment, the source and credibility of the advocate." *Bellotti*, 435 U.S. at 791-92 (footnotes omitted), *see also Human Life of Wash., Inc. v. Brumsickle*, 624 F. 3d 990, 1008 (9th Cir. 2010) (quoting *Bellotti*). Accordingly, while striking down a Massachusetts law that prohibited corporate expenditures in ballot referendum campaigns, the *Bellotti* Court simultaneously emphasized that "[c]orporate advertising, unlike some methods of participation in political campaigns, is likely to be highly visible. Identification of the source of advertising may be required as

a means of disclosure, so that the people will be able to evaluate the arguments to which they are being subjected." 435 U.S. at 792 n.32.

Voters are plainly eager for this information. For example, the Center for Responsive Politics runs a website (www.opensecrets.org) that aggregates and presents publicly-disclosed campaign finance data in a format that is easy to use by both the public and the press. In 2007, this website counted over 15 million visitors.[3] Indeed, the Supreme Court in *Citizens United* praised the transformative power of Internet technology for voters seeking information about political expenditures. *See Citizens United*, 130 S. Ct. at 905-06 ("With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters.").

The institutional press, the Internet press, scholarly researchers, and many publicly-inclined non-profit organizations have also made widespread use of the data generated by the longstanding public disclosure requirements. The campaign finance data from OpenSecrets.org alone has been used in thousands of news and

[3] *See* OpenSecrets.org, http://www.opensecrets.org/about/tour.php. Other organizations that publicly compile this information include the Campaign Finance Institute (www.cfinst.org) and the National Institute on Money in State Politics (www.followthemoney.org).

opinion articles.[4] These media reports have been disseminated widely both before and after elections, revealing the depth and nature of support for particular candidates, parties and causes. Indeed, campaign finance disclosures are essential for the press to perform its function as the watchdog of government. *See Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 585 (1983) ("[T]he basic assumption of our political system [is] that the press will often serve as an important restraint on government . . . and an informed public is the essence of working democracy."). Such a role is not possible if the important facts concerning funding and influence are hidden from both the press and the public.

In Minnesota, perhaps the most well-known disclosure during the 2010 election was the disclosure of Target's donation of $100,000 in cash and $50,000 in in-kind services to MN Forward, an independent expenditure political committee which used most of its funds to support the gubernatorial campaign of Republican candidate Tom Emmer. This donation, which came to light because of the disclosure requirements applied to such organizations under Minnesota law, inspired vigorous public debate. The press reported heavily on this story, using it

[4] A search performed on December 13, 2010, in the Westlaw ALLNEWS database for the website's administering organization, the Center for Responsive Politics, generated the maximum-available result of over 10,000 instances in which the website's campaign finance data has been used in news and opinion reports and articles.

as an opportunity to investigate and debate the role of for-profit corporations in the political process.[5] Advocates (particularly those who opposed Emmer's stance against gay marriage) used this disclosure to challenge the purported inconsistency in Target's support of gay and lesbian rights.[6] Ultimately, Target's CEO issued a statement to the company's employees explaining the company's support for MN Forward's economic agenda, but reiterating the company's "commitment to diversity, and more specifically, the GLBT community."[7]

There are numerous other examples to illustrate the public's interest in understanding who is funding independent political expenditures. For instance, the recent *Brumsickle* case involved the "emotionally charged battle" surrounding Initiative 1000, a 2008 Washington State ballot initiative that legalized physician-assisted suicide in certain instances. *See Brumsickle*, 624 F.3d at 995. The public debate over Initiative 1000 included media reports on the funding behind the

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[5] *See*, *e.g.*, Jia Lynn Yang & Dan Eggen, *Campaign Spending Puts Target in Bull's-Eye*, Wash. Post, Aug. 19, 2010, *available at* http://www.washingtonpost.com/wp-dyn/content/article/2010/08/18/AR2010081806759.html; John Gibeaut, *A Cautionary Tale of Corporate Political Spending Emerges in Minnesota*, ABA Journal, Oct. 22, 2010, *available at* http://www.abajournal.com/news/article/a_cautionary_tale_target_corporate_political_spending_emerges_in_minnesota/.

[6] *See* Joe Kimball, *Target CEO Addresses MN Forward Contribution, Says Company Supports GLBT Community*, MinnPost.com, July 27, 2010, http://www.minnpost.com/politicalagenda/2010/07/27/20033/ target_ceo_addresses_mn_forward_contribution_says_company_supports_glbt_community.

[7] *Id.*

campaigns to support and oppose the ballot initiative. *Id.* at 997 (citing Richard Roesler, *I-1000 Advocates Raking It In,* Spokesman-Review, Apr. 30, 2008; Susan Gilmore, *How Money Talks on Initiatives,* Seattle Times, Nov. 22, 2004). This reporting illustrated that Washington had become "a national battleground in the fight over assisted suicide," with hundreds of thousands of dollars pouring in from constituencies that included "death with dignity" activists, advocates for the disabled, doctors, pro-life groups and the Catholic Church. *See* Roesler, *supra*. Campaign finance disclosures allowed voters to understand the powerful forces on both sides of this issue, and to consider how their vote on this ballot initiative might connect to other political debates and contests.

These examples encapsulate all of the positive values extolled by *Citizens United* – vigorous and engaged public debate by all of the participants; a fully-educated citizenry able to make informed decisions about political messages; and corporate political activity that is fully protected by the First Amendment while also being responsive to the corporation's shareholders, employees and customers. *See Citizens United*, 130 S. Ct. at 916; *cf. Doe v. Reed*, 130 S. Ct. 2811, 2837 (2010) (Scalia, J., concurring) ("Requiring people to stand up in public for their political acts fosters civic courage, without which democracy is doomed."). In fact, the Ninth Circuit specifically cited the public reaction to Target's political

contribution as a textbook illustration of the "corporate accountability" called for by *Citizens United*. *See Brumsickle*, 624 F.3d at 1017 n.6.

In short, disclosure of campaign financing is necessary to educate voters fully before they cast their ballots. As the Ninth Circuit has concluded:

> Campaign finance disclosure requirements thus advance the important and well-recognized governmental interest of providing the voting public with the information with which to assess the various messages vying for their attention in the marketplace of ideas. An appeal to cast one's vote a particular way might prove persuasive when made or financed by one source, but the same argument might fall on deaf ears when made or financed by another.

Id. at 1008. This Court should similarly recognize the well-established informational interests of voters in this appeal.

III. Minnesota's Disclosure Law Serves Shareholders' Substantial Interest in Information about Corporate Expenditures.

The *Citizens United* Court emphasized that shareholders also have a distinct interest in robust disclosure. As the Court explained:

> [P]rompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for the positions and supporters. Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits, and citizens can see whether elected officials are "'in the pocket' of so-called moneyed interests."

Citizens United, 130 S. Ct. at 916 (quoting *McConnell*, 540 U. S. at 259 (opinion of Scalia, J.)).

The public record contains ample evidence of shareholders' interest in corporate disclosures. After the public disclosure of the Target donation described above, institutional investors filed a shareholder resolution demanding that Target revamp its political donation process to protect shareholders.[8] Similar shareholder action followed disclosure of a political contribution made by Best Buy to MN Forward.[9] These actions to protect shareholders (including large pension funds) would not have been possible without Minnesota's strong disclosure laws.

Shareholders' interest in disclosure is evident outside of Minnesota as well. For instance, institutional investors recently filed shareholder resolutions with several corporations that sit on the Board of the U.S. Chamber of Commerce in response to the Chamber's vigorous campaign spending during the 2010 election season (an estimated $75 million).[10] These shareholders argue that the corporations' implicit support of the Chamber's political activity, and the

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[8] *See* Jennifer Martinez and Tom Hamburger, *Target Feels Backlash from Shareholders*, L.A. Times, Aug. 19, 2010, *available at* http://articles.latimes.com/2010/aug/19/nation/la-na-target-shareholders-20100820.

[9] *See id.*

[10] *See* Eliza Newlin Carney, *Business Leaders See Risks in Unchecked Political Spending*, National Journal, Dec. 13, 2010, http://nationaljournal.com/columns/rules-of-the-game/business-leaders-see-risks-in-unchecked-political-spending-20101213; Press Release, Walden Asset Management & Domini Social Investments, *Investors Announce Challenges on Political Spending to Corporate Responsibility Leaders: Role as U.S. Chamber of Commerce Board Members Highlighted* (Nov. 4, 2010), *available at* http://www.waldenassetmgmt.com/social/action/Pol_Spending_PR.pdf.

controversy or opposition generated by that activity, may have a negative impact on the corporations' bottom line at the shareholders' expense.[11] These shareholders also complain that they are being compelled to support the Chamber's political speech on controversial issues such as healthcare and climate change, even though the Chamber's message may be antithetical to the political views of the shareholders, and may even conflict with the policies of some of the corporations themselves.[12] This effort to protect shareholders' financial and political interests would not be possible without the disclosure of corporate political spending made possible by laws like Minnesota's.

Shareholders have also complained that corporate political spending may benefit a small class of corporate executives or directors rather than the interests of the corporation and its shareholders as a whole. The Nathan Cummings Foundation, an institutional investor, has raised this concern to News Corporation's Board of Directors in response to their decision to donate substantial corporate assets to right-leaning political causes during the 2010 election cycle.[13] The foundation cited recent news reports suggesting that News Corporation's $1

[11] *See* Carney, *supra* note 10; Press Release, Walden Asset Management & Domini Social Investments, *supra* note 10.

[12] *See* Carney, *supra* note 10; Press Release, Walden Asset Management & Domini Social Investments, *supra* note 10.

[13] *See* Letter from Nathan Cummings Found. to News Corp. (Oct. 11, 2010), *available at* http://nathancummings.net/news/NewsCoprLtr101110.pdf.

million donation to the Republican Governors Association was wholly based on Chairman and CEO Rupert Murdoch's personal friendships with Republican Party leaders.[14] The foundation, writing as a News Corporation shareholder, called for full disclosure of the corporation's political spending to ensure that the Board fulfilled its "fiduciary responsibility to its shareholders to ensure that corporate funds are allocated in ways that serve the Company's interest and will ultimately drive shareholder value creation."[15]

The increased ability of corporations to use shareholders' assets for political spending after *Citizens United* has increased shareholder efforts to protect their investments through adequate disclosure.[16] But, shareholders' concern about corporate political spending predates *Citizens United*. For example, the pharmaceutical company Merck faced shareholder backlash after it reportedly donated corporate funds during a 2004 state judicial election to a candidate whose anti-gay-marriage platform and racially-tinged rhetoric conflicted with Merck's

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[14] *Id.* at 2.

[15] *Id.* at 1.

[16] *See* Erik Krusch, *Proxy Disclosure: Corporate Citizens United*, Westlaw Business Currents, Apr. 2, 2010, http://currents.westlawbusiness.com/Article.aspx?id=566cd30d-4381-420d-8cce-216c3919d540 (citing increase in investor proposals for disclosure of corporate political spending since *Citizens United*).

own diversity policies.[17] As this instance illustrates, public disclosure ensures that corporations take responsibility for their political actions and are accountable to shareholder concerns about political spending that appears to conflict with other corporate policies. Notably, the Center for Political Accountability currently heralds Merck as a corporate leader for the transparency and accessibility of its political spending reports.[18]

Finally, it would be a mistake for the Court to assume that Plaintiffs-Appellants adequately represent the prevailing view among corporations themselves. In fact, the Committee for Economic Development ("CED"), a non-profit public policy organization that is led by corporate executives, recently commissioned a Zogby International survey that shows broad corporate support for transparency in political spending.[19] The survey found that 77% of the more than 300 business opinion leaders polled support corporations "disclosing all of their direct and indirect political expenditures, including money provided to other

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[17] *See* Douglas Waller, *Secrets of Corporate Giving*, Time, May 14, 2006, *available at* http://www.time.com/time/magazine/article/0,9171,1194037,00.html.

[18] *See* Center for Political Accountability, *Best in Disclosure*, http://www.politicalaccountability.net/index.php?ht=d/sp/i/1439/pid/1439.

[19] *See* Press Release, Committee for Economic Development, *New Business Poll Shows Discontent with Undisclosed Campaign Expenditures Following Citizens United Decision* (Oct. 28, 2010), *available at* http://www.ced.org/news-events/campaign-finance-reform/561-press-release; *see also* Carney, *supra* note 10 (discussing survey results).

organizations to be spent on campaign advertisements, with three out of five (57%) saying they strongly support such actions."[20] CED and its constituency of corporate leaders concluded that campaign finance reforms, including robust disclosure laws, help to protect the corporate bottom line.[21] These business leaders recognize that rampant and undisclosed corporate political spending may exacerbate often extortionate pressures on American businesses to donate increasing sums to political campaigns.

This is not an idle concern. As the *McConnell* Court observed, when reviewing the evidentiary support for BCRA's regulation of "soft money":

> [T]he largest corporate donors often made substantial contributions to both parties. Such practices corroborate evidence indicating that many corporate contributions were motivated by a desire for access to candidates and a fear of being placed at a disadvantage in the legislative process relative to other contributors, rather than by ideological support for the candidates and parties.

McConnell, 540 U.S. at 124-25. The Court also cited testimony from business leaders that "corporate soft-money contributions are 'coerced and, at bottom, wholly commercial' in nature, and that '[b]usiness leaders increasingly wish to be freed from the grip of a system in which they fear the adverse consequences of refusing to fill the coffers of the major parties.'" *Id.* at 125 n.13 (quoting Brief for

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[20] Zogby International, *Committee for Economic Development: October Business Leader Study* 15 (Oct. 2010), *available at* http://files.e2ma.net/1351457/assets/docs/zogbypoll2010.pdf.

[21] *See* CED Press Release, *supra* note 19.

Committee for Economic Development et al. as *Amici Curiae* 28). Disclosure – by enabling shareholders to serve as watchdogs for inappropriate uses of corporate treasuries – can mitigate the pressure on corporate America to participate in an escalating arms race of covert political spending.

As this discussion evidences, disclosure protects shareholders and a corporation's bottom line by publicizing how money is spent to influence political outcomes. This is yet another reason that Minnesota's disclosure laws should be upheld.

CONCLUSION

Citizens United has helped to spark a significant increase in corporate political spending – and a concomitant increase in the public's interest in disclosure of that spending. *See Brumsickle*, 624 F.3d at 1007-08 ("As trends in campaign finance jurisprudence have opened the door to even more political expenditures in the future, the magnitude of the state's interest is only likely to increase."). This Court should protect the vigorous public debate that is beginning to unfold around corporate spending by making clear the First Amendment interest of voters and shareholders in the information made available through Minnesota's disclosure law. Transparency of corporate political spending, made possible by robust disclosure regimes such as Minnesota's, was fully envisioned by the

Citizens United Court and is necessary to ensure that voters and shareholders are adequately informed and protected.

Accordingly, the Brennan Center respectfully asks the Court of Appeals to affirm the lower court's ruling in its entirety.

Dated: December 21, 2010

Respectfully submitted,

THE BRENNAN CENTER FOR JUSTICE
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1. This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,306 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2003 in 14-point Times New Roman font.

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The undersigned, on behalf of the party filing and serving this brief, certifies that the enclosed electronic copy of this brief has been scanned for viruses and that the brief is virus-free.

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