

**COMMITTEE ON DISCLOSURE OF CORPORATE POLITICAL SPENDING
PETITION FOR RULEMAKING**

August 3, 2011

Ms. Elizabeth M. Murphy
Secretary
Securities and Exchange Commission
100 F Street, Northeast
Washington, D.C. 20549

Dear Ms. Murphy:

The Committee on Disclosure of Corporate Political Spending respectfully submits this petition for rulemaking under Section 14 of the Securities Exchange Act of 1934.¹ We ask that the Commission develop rules to require public companies to disclose to shareholders the use of corporate resources for political activities.

Our Committee is composed of ten academics whose teaching and research focus on corporate and securities law:

- Lucian A. Bebchuk, William J. and Alicia Townsend Friedman Professor of Law, Economics and Finance at Harvard Law School;
- Bernard S. Black, Chabraja Professor, Northwestern University Law School and Kellogg School of Management;
- John C. Coffee, Jr., Adolf A. Berle Professor of Law at Columbia Law School;
- James D. Cox, Brainerd Currie Professor of Law at Duke Law School;
- Ronald J. Gilson, Charles J. Meyers Professor of Law and Business, Stanford Law School, and the Marc & Eva Stern Professor Law and Business, Columbia Law School;
- Jeffrey N. Gordon, Alfred W. Bressler Professor of Law at Columbia Law School;
- Henry Hansmann, Oscar E. Ruebhausen Professor of Law at Yale Law School;
- Robert J. Jackson, Jr., Associate Professor of Law at Columbia Law School;
- Donald C. Langevoort, Thomas Aquinas Reynolds Professor of Law at Georgetown Law School; and
- Hillary Sale, Walter D. Coles Professor of Law and Professor of Management, Washington University in St. Louis School of Law.

We act in our individual capacities; our institutional affiliations are noted for identification purposes only.

We differ in our views on the extent to which corporate political spending is beneficial for, or detrimental to, shareholder interests. We all share, however, the view that information about corporate spending on politics is important to shareholders—and that the Commission's rules should require this information to be disclosed. Our petition proceeds as follows:

¹ SECURITIES AND EXCHANGE COMMISSION, RULES OF PRACTICE AND RULES ON FAIR FUND AND DISGORGEMENT PLANS, Rule 192(a).

- First, we explain that the Commission’s disclosure rules have evolved over time in response to changes in investor interests and needs.
- Second, we present data indicating that public investors have become increasingly interested in receiving information about corporate political spending.
- Third, we explain that, in response to increased investor interest, a large number of public companies have voluntarily adopted policies requiring disclosure of the company’s spending on politics, and the disclosure practices of these companies can provide a useful starting point for the Commission’s design of disclosure rules in this area.
- Fourth, we explain that disclosure of information on corporate political spending is important for the operation of corporate accountability mechanisms, including those that the courts have relied upon in their analysis of corporate political speech.
- Fifth, we explain that the design of disclosure rules concerning political spending should draw on the Commission’s expertise and experience in designing disclosure rules in other areas, and we offer preliminary comments about the design of rules in this area.

We conclude that the Commission should promptly initiate a rulemaking project to require disclosure of corporate political spending to public-company shareholders.

The Evolving Nature of Disclosure Requirements

The Commission has clear and longstanding authority to determine what information public companies must disclose to their shareholders.² Although the Securities Exchange Act of 1934 originally specified only a few matters required to be disclosed, Congress, noting that corporate ““practices constantly vary,”” “opted to rely on the discretion and expertise of the SEC for a determination of what types of additional disclosure would be desirable.”³ Thus, over time, the Commission has developed an elaborate body of disclosure rules that provide public-company shareholders with detailed information on the companies in which they invest.

The Commission’s development of this framework has been dynamic in nature. Over time, the Commission’s disclosure rules have changed in response to increased investor interest in receiving particular types of information about the companies they invest in, changes in disclosure practices, or external events that increase the importance of certain types of information for shareholders.

Shareholder interest in particular corporate information has often prompted the Commission to consider whether additional disclosure is needed. For example, in 1992 the Commission considered whether its rules requiring disclosure on executive pay, which had been promulgated nine years earlier, should be revised to require more detailed quantitative information. The Commission noted that investors had expressed considerable interest in

² See, e.g., Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. § 78n(a) (prohibiting the solicitation of proxies “in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors”).

³ *Natural Resources Defense Council, Inc. v. SEC*, 606 F.2d 1031, 1045 (D.C. Cir. 1979) (quoting H.R. Rep. No. 1383, 73d Cong., 2d Sess. 6-7 (1934)); see also *id.* at 1051 (“The Commission is given complete discretion . . . to require in corporate reports only such information as it deems necessary or appropriate in the public interest or to protect investors.”).

executive compensation: The preamble to its proposed rules cited shareholder proposals on executive pay at nine large, well-known public companies.⁴

Similarly, in 1975, while considering a proposal to require disclosure related to social-policy matters, the Commission carefully evaluated investor interest in that information. Eventually concluding that no special rules were required in this area, the Commission expressly noted that “corporations have apparently not received a significant number of social inquiries from their shareholders,” and that shareholder proposals on the issue were rare and received little support.⁵

More recently, the Commission considered whether to revise its rules to require disclosure on director oversight of risk taking. Here, too, the Commission concluded that increased investor interest in the issue—which had not previously been the subject of a disclosure rule—suggested that new disclosure rules were desirable. Noting that the financial crisis had caused “investors [to] increasingly . . . express[] the desire for additional information that would enhance their ability to make informed voting and investment decisions,” the Commission issued new rules requiring extensive new disclosure on this issue.⁶

In addition to investor interest, changes in the Commission’s disclosure rules have also been motivated by external events that rendered particular information about public companies more important for investors. Recently, for example, in connection with new rules requiring disclosure on director oversight of risk taking, the Commission concluded that “recent market events ha[d] demonstrated” that “the capacity to assess risk and respond to complex financial and operational challenges can be important attributes” for directors.⁷

Thus, the Commission’s disclosure rules have evolved over time in response both to investors’ changing interests and to external events that render particular information important for investors. As we explain below, both investor interest and external events related to corporate spending on politics indicate that information on such spending is increasingly important for shareholders.

Increasing Investor Interest in Corporate Political Spending

Investors have increasingly expressed significant interest in obtaining information on corporate spending on political activity. Investor polls, shareholder proposals, and the policy statements of the largest institutional investors all make clear that investors are increasingly interested in corporate spending on politics.

⁴ See Executive Compensation Disclosure, Exch. Act Release No. 33-6940, 57 Fed. Reg. 29,582 (1992).

⁵ See Environmental and Social Disclosure, Exch. Act Release No. 33-5627, 40 Fed. Reg. 51,656, 51,664 (1975).

⁶ Proxy Disclosure Enhancements, Exch. Act Release No. 33-9089, 74 Fed. Reg. 68,334 (2009).

⁷ Proxy Disclosure and Solicitation Enhancements, Release No. 33-9052, 74 Fed. Reg. 35,076, 35,082 (2009); see also *id.* 35,085 (noting that, “[g]iven the role that risk and the adequacy of risk oversight . . . played in the recent market crisis,” new disclosure rules were needed).

As early as 2006, polls indicated that 85% of shareholders held the view that there is a lack of transparency surrounding corporate political activity.⁸ According to these polls, “[i]ntensity among shareholder opinion was pronounced,” with 57% of shareholders “strongly agreeing” that there is too little transparency with respect to corporate spending on politics.

This substantial level of shareholder attention is also reflected in significant numbers of shareholder proposals requesting disclosure of corporate political spending. As the Commission has previously recognized, shareholder proposals can serve as a good indicator of the level of investor interest in particular corporate decisions. Shareholder proposals reflect, of course, the proponent’s interest in the subject matter; and, because proponents are more likely to focus their limited resources on proposals that have better prospects of attracting significant support, data about shareholder proposals indicate the types of proposals likely to attract support.

The evidence shows that shareholders have brought proposals requesting further disclosure of corporate political spending at a substantial number of public companies in recent years. According to the Sharkrepellent dataset of FactSet Research Systems, during the 2011 proxy season, out of the 465 shareholder proposals appearing on public-company proxy statements, 50 proposals were related to political spending, and more proposals of this type were included in proxy statements than any other type of proposal.⁹

By comparison, other types of shareholder proposals, including proposals related to issues that have long attracted significant interest from investors, appeared less frequently on public-company proxy statements. The number of proposals concerning political spending (50) exceeded the number of proposals related to board declassification (45), majority voting (39), the separation of the Chairman and CEO positions (23), the elimination of supermajority voting requirements (18), executives’ golden parachutes (7), clawback of incentive compensation (3), and requirements that executives retain equity in the company (7).¹⁰

⁸ MASON-DIXON POLLING & RESEARCH, CORPORATE POLITICAL SPENDING: A SURVEY OF AMERICAN SHAREHOLDERS 6 (2006).

⁹ Based on a July 25, 2011 search of the SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, available at <http://sharkrepellent.net>; see also SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROPOSAL TYPES (proposals related to “political issues” include “[s]hareholder sponsored proposals to request that the board provide a report detailing the company’s policies regarding political contributions.”).

¹⁰ The Sharkrepellent dataset includes a broad universe of shareholder proposals, including some proposals by individuals that may not reflect institutional shareholder preferences. SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, *supra* note 9. However, an analysis of the Sharkrepellent dataset focused only on proposals submitted by institutional investors also finds that proposals related to corporate political spending appeared on proxy statements more frequently than any other type of proposal. The percentage of proposals related to political issues that come from institutions (76%) is greater than the percentage of all proposals that come from institutions overall (55%). (Where Sharkrepellent does not have data on the nature of the proponent of a proposal, we assume that the proposal was not brought by an institution.) Among only those proposals brought by institutional shareholders, the number of proposals related to political issues (38) exceeded the number of proposals related to board declassification (23), majority voting (31), the separation of the Chairman and CEO positions (18), the elimination of supermajority voting requirements (1), executives’ golden parachutes (7), clawback of incentive compensation (1), and requirements that executives retain equity in the company (3).

Moreover, an analysis of the Institutional Shareholder Services dataset, which emphasizes proposals most relevant for large institutional investors, also found that proposals related to corporate political speech. According to that dataset, among the 419 proposals included on proxy statements in 2011, 50 were related to corporate

To illustrate the frequency of shareholder proposals seeking additional disclosure of political spending in large public companies, the following analysis, limited to S&P 100 companies, may be useful. During the 2011 proxy season, 25 companies in the S&P 100 included such a proposal on the proxy statement—indicating that proxies at one out of four of America’s largest corporations included proposals requesting disclosure of corporate spending on politics.¹¹ The level of shareholder interest in this area has been quite high, not just during the most recent proxy season but throughout the past five years. During this period, 105 companies that were in the S&P 100 received one or more shareholder proposals requesting disclosure of the company’s spending on politics and held votes on such proposals at an annual meeting.¹²

Furthermore, the figures above actually underestimate investor interest in, and demand for, information on political spending. As described below, a large number of public companies have already voluntarily changed their disclosure practices to provide this information to shareholders. In the most recent proxy season, focusing solely on companies currently in the S&P 100 that have not already agreed to disclose information about political spending, 50% of these firms included shareholder proposals on political issues. Thus, half of the S&P 100 companies that have not yet voluntarily agreed to provide this information to investors held a vote on a proposal related to these issues in 2011.

As discussed in the preceding section, the Commission has previously taken note of the frequency and support given to shareholder proposals in connection with considering changes to its disclosure rules. For example, when considering revisions to the disclosure requirements related to executive pay in 1992, the Commission noted that 9 large public companies had held a vote on such proposals, signaling increased investor interest in executive compensation.¹³ By comparison, during the 2011 proxy season 25 companies in the S&P 100, as well as another 19 public companies outside the S&P 100, held a vote on one or more proposals requesting further disclosure on corporate political spending. Thus, the total number of firms holding votes on such proposals is more than four times the number of proposals that moved the Commission to revise the executive-pay disclosure rules in 1992.¹⁴ It is also worth noting that shareholder support for proposals requesting disclosure on corporate political spending is currently far higher than the average support for proposals related to executive pay that motivated the Commission to expand compensation disclosure requirements in 1992.¹⁵

spending on politics, more than any other type of proposal in the database. See Email from Erik Mell, Institutional Shareholder Services, to Robert J. Jackson, Jr. (July 27, 2011).

¹¹ As previously noted, the Sharkrepellent dataset includes proposals from both institutional investors and individuals. Among the 25 companies in the S&P 100 to include proposals relating to political issues, 20 received at least one proposal from an institutional investor; five companies received only proposals from individuals.

¹² SHARKREPELLENT DATASET OF FACTSET RESEARCH SYSTEMS INC., PROXY PROPOSALS, *supra* note 9. Of course, this group of firms includes more than 100 companies, because the constituent firms in the S&P 100 changed during this period. However, a substantial proportion of the firms in this group received, and held votes on, shareholder proposals requesting disclosure of corporate spending on politics.

¹³ See Executive Compensation Disclosure, *supra* note 4, 57 Fed. Reg. 29,582, 29,582 & n.8.

¹⁴ This difference is even more striking in light of the fact that, at the time of the 2011 proxy season, more than half of the S&P 100 firms had already agreed to provide disclosure of corporate political spending voluntarily. By contrast, in 1992 very few firms were providing voluntary disclosure of executive compensation.

¹⁵ The proposals noted by the Commission when the executive-pay rules were modified had the support of 11.2% of shareholders casting votes for and against. By contrast, during the 2011 proxy season proposals requesting disclosure on corporate political spending enjoyed, on average, 32.5% support.

The strong interest among shareholders in corporate spending on politics has also been expressed in public statements by institutional investors. For example, TIAA-CREF, which has over \$450 billion in assets under management, has said that “[c]ompanies involved in political activities should disclose . . . contributions as well as the board and management oversight procedures designed to ensure that political expenditures are . . . in the best interests of shareholders.”¹⁶ And the Council of Institutional Investors has similarly said that public companies should “disclose on an annual basis the amounts and recipients of all monetary and non-monetary contributions made” from the company’s treasury.¹⁷

Evolving Disclosure Practices in Response to Investor Interest

As Congress anticipated when it first enacted the Securities Exchange Act in 1934, corporate practices with respect to disclosure vary considerably over time. With respect to corporate spending on politics, public companies’ disclosure practices have recently been evolving in ways that reflect the growing demand for transparency in this area—and indicate that such disclosure is practically feasible for public companies.

Since 2004, responding to shareholder demand for information about political spending, large public companies have increasingly agreed voluntarily to adopt policies requiring disclosure of the company’s spending on politics. Figure I below describes the growth over time of the total number of firms in the S&P 100 that have voluntarily adopted such policies:¹⁸

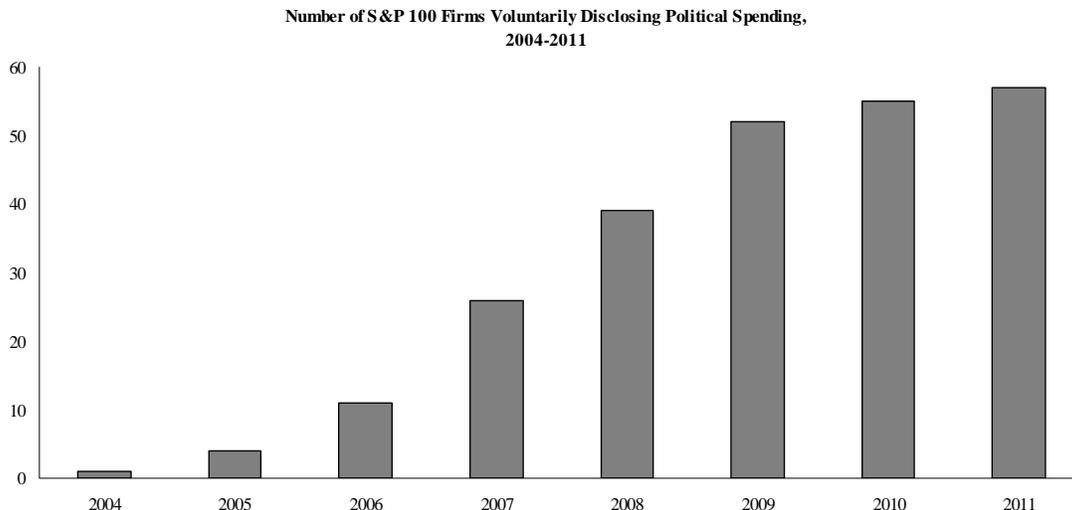


Figure I. Total S&P 100 Firms Voluntarily Disclosing Political Spending

¹⁶ TIAA-CREF POLICY STATEMENT ON CORPORATE GOVERNANCE 16 (6th ed. 2011); *see also id.* (“corporate political spending may benefit political insiders at the expense of shareholder interests”).

¹⁷ COUNCIL OF INSTITUTIONAL INVESTORS, CORPORATE GOVERNANCE POLICIES 7 § 2.14b (2011).

¹⁸ *See* CENTER FOR POLITICAL ACCOUNTABILITY, LEADERS IN POLITICAL DISCLOSURE, *available at* <http://www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869> (last accessed July 25, 2011).

As Figure I indicates, the fraction of S&P 100 companies that have adopted such policies has increased from a trivial level in 2004 to close to 60% by 2011. The evidence that many public companies have, in response to shareholder interest, voluntarily agreed to give investors information on corporate political spending is important for several reasons. First, the evidence illustrates that increased disclosure in this area is feasible and practical for large public companies. Second, the data provide a rich set of disclosure practices that a significant number of issuers have been comfortable using, and that may thus serve as a starting point for the Commission in designing disclosure rules in this area.¹⁹ Finally, the widespread adoption among S&P 100 firms of policies requiring some disclosure of political spending reflects companies' recognition of the strong investor interest in such information, discussed in the previous section, and the strong case, discussed in the next section, for giving shareholders this information.

The Importance of Disclosure to Investor Monitoring and Corporate Accountability Mechanisms

Disclosure of corporate political spending is necessary not only because shareholders are interested in receiving such information, but also because such information is necessary for corporate accountability and oversight mechanisms to work.²⁰ The Supreme Court has often recognized, and indeed relied upon, these accountability mechanisms, particularly when corporations use shareholder resources for political purposes. In particular, in its recent decision in *Citizens United v. FEC*,²¹ the Court relied upon “[s]hareholder objections raised through the procedures of corporate democracy” as a means through which investors could monitor the use of corporate resources on political activities. “Shareholders,” the Court hoped, could “determine whether their corporation’s political speech advances the corporation’s interest in making profits,” and discipline directors and executives who use corporate resources for speech that is inconsistent with shareholder interests.²²

For this mechanism to work, however, shareholders must have information about the company’s political speech; otherwise, shareholders are unable to know whether such speech “advances the corporation’s interest in making profits.” Because the Commission’s current rules do not require public companies to give shareholders detailed information on corporate spending

¹⁹ We note, however, that the type of disclosure provided by these firms varies substantially—as the Commission’s staff recently noted in an important decision strengthening shareholders’ ability to seek disclosure on political spending. In that case, *see* The Home Depot, Inc., SEC No-Action Letter, 2011 SEC No-Act. LEXIS 333, at *1 (Mar. 25, 2011), a Home Depot shareholder filed a proposal requesting, among other things, that the company provide more complete disclosure of its political spending. Home Depot responded that its existing policies on disclosure in this area “compare favorably” with those in the proposal, and that the proposal could thus be excluded from Home Depot’s proxy. The Staff disagreed, and Home Depot included the shareholder proposal in its 2011 proxy statement. *See id.*

²⁰ For detailed analysis of the importance of disclosure in this area for the functioning of corporate accountability mechanisms, *see* Lucian A. Bebchuk & Robert J. Jackson, Jr., *Corporate Political Speech: Who Decides?*, 124 HARV. L. REV 83, 97 (2010).

²¹ 130 S. Ct. 876 (2010).

²² *Id.* at 916. The Court has often relied upon these mechanisms in its First Amendment analysis. *See, e.g.*, *First Nat’l Bank of Bos. v. Bellotti*, 435 U.S. 765, 794-95 (1978) (“Ultimately shareholders may decide, through the procedures of corporate democracy, whether their corporation should engage in debate on public issues.”).

on politics, shareholders cannot play the role the Court described.²³ Absent disclosure, shareholders are unable to hold directors and executives accountable when they spend corporate funds on politics in a way that departs from shareholder interests.

Members of our group differ in their views on the extent to which, even with perfect information, the existing procedures of corporate democracy will ensure that corporate political activity is aligned with shareholder interests. We unanimously agree, however, that these mechanisms cannot work without strong disclosure rules providing investors the information they need to assess and respond to corporate political spending. Thus, rulemaking is needed in order for the governance mechanisms the Supreme Court has relied upon to work effectively.

It might be argued that, because some information on corporate spending on politics is already required to be publicly disclosed under federal, state and local election laws, shareholders can readily obtain this information even in the absence of rulemaking by the Commission. However, this argument is incorrect for two reasons. First, the information that is publicly available on corporate political spending is scattered among several federal, state and local government agencies, presented in widely varying formats, and is ill-suited to giving shareholders a good picture of a particular corporation's political spending. Putting together all the information available from different public sources on a given company's political spending is a demanding task. Public-company investors should not have to bear the costs of assembling this information from these sources when the corporation, which already has the information, can easily provide it to shareholders. The corporation, rather than individual investors, is in the best position to assemble this information in an efficient manner.

Second, and importantly, a substantial amount of the public-company resources spent on politics are currently not disclosed in any public filing and thus would be hidden even from someone who invested significant effort in trying to put together all the publicly available information about a company's public spending. For example, a substantial amount of corporate spending on politics is conducted through intermediaries not required to disclose the sources of their contributions to the public.

To illustrate, five large intermediaries that likely receive substantial sums from public companies whose identities are not publicly known spent more than \$130 million on lobbying and politics during the 2008 election cycle alone.²⁴ Even a determined individual shareholder willing to collect all available public information on a public company's spending on politics would be unable to measure any spending through these intermediaries. Thus, in order to make use of the procedures of corporate democracy that the Court relied upon in *Citizens United*, shareholders will need more information than is currently publicly available.

²³ As one of us explained in testimony before the House of Representatives, "shareholders of public companies lack an effective means by which to control managerial behavior" with respect to the spending of corporate resources on politics, because they do not "receive adequate information (without which they have little incentive to take action)." *Corporate Governance After Citizens United: Hearing Before the Subcomm. on Capital Markets, Ins., & Gov't Sponsored Enters. of the H. Comm. on Fin. Servs.*, 111th Cong. 10 (2010) (testimony of John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia Law School).

²⁴ See Bebchuk & Jackson, *supra* note 20, at 93-94 & tbl.

It might be argued that this information is not sufficiently important to shareholders to be relevant to shareholders' use of the procedures of corporate democracy. As explained above, however, investor interest in corporate political spending has been significant for some time—even before the Court's recent decision in *Citizens United*. It is worth noting, moreover, that—putting aside the level of investor interest in corporate spending on politics—the significance of the subject has objectively increased as a result of *Citizens United*. In *Citizens United*, the Supreme Court concluded that federal restrictions on corporate independent spending in support or opposition of political candidates are unconstitutional. These rules, and similar laws in two dozen states, previously restricted the scope of corporate resources that could be spent on political activities. *Citizens United*, however, removes these restrictions. Thus, we can expect that corporate spending on politics will continue to be of significance to investors in the future.²⁵

Finally, in light of the Supreme Court's recent decision in *Citizens United*, it might be argued that the Commission, and even the Congress, is precluded by the First Amendment from adopting rules requiring disclosure of this information. The Constitution, however, leaves ample room for effective disclosure rules in this area.²⁶ The Court in *Citizens United* upheld the disclosure rules challenged in that case by an 8-1 vote.²⁷ The Court has long given the Commission considerable deference in the development of rules designed to give investors information necessary to facilitate the functioning of securities markets.²⁸ The *Citizens United* Court noted that “prompt disclosure of expenditures can provide shareholders . . . with the information needed to hold corporations . . . accountable” for political spending, ensuring that the corporation's First Amendment rights are exercised in accordance with the wishes of its owners. We recommend that the Commission develop rules that would provide such disclosure.

The Design of Disclosure Requirements

For the reasons given above, it would be beneficial for investors to receive information on public companies' use of shareholder resources on politics. Some might argue, however, that designing rules in this area would be especially complex. But, as we explain below, the design of disclosure rules in this area would involve similar choices, and confront similar design issues, as those presented by the disclosure rules the Commission has previously developed. Thus, the Commission has significant experience and expertise in designing rules of this kind. Below we identify some of the design questions the Commission will face during the rulemaking process. As we explain, the Commission has ample experience and expertise to guide these choices.

²⁵ This will be particularly true if the holding of *Citizens United* is extended to laws that prohibit companies from making *direct* contributions to political candidates, see 2 U.S.C. § 441b. One court has already concluded that *Citizens United* requires the invalidation of these laws. *United States v. Danielczyk*, 2011 U.S. Dist. LEXIS 57158 (E.D. Va., May 26, 2011).

²⁶ See Bebchuk & Jackson, *supra* note 20, at 107-11.

²⁷ We note that the Court's more recent decision in *Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 180 L. Ed. 2d 544 (2011), might raise similar concerns. The *Sorrell* Court, however, considered a statute that prohibited the dissemination of certain commercial information subject to content-based exceptions. See *id.*, 180 L. Ed. 2d at 554-55. The Court did not suggest that its holding implicated its longstanding approach to rules requiring disclosure of certain information to securities investors. See, e.g., Frederick Schauer, *The Boundaries of the First Amendment: A Preliminary Exploration of Constitutional Salience*, 117 HARV. L. REV. 1765, 1779-80 (2004).

²⁸ See Schauer, *supra* note 27, at 1780.

First, we expect that the Commission will be required to determine whether certain *de minimis* corporate spending on political activity should be exempt from disclosure. We encourage the Commission to adopt such a *de minimis* exception. We note, however, that the symbolic significance of corporate spending on politics suggests setting an appropriately low threshold. The Commission's existing rules, such as its rules concerning disclosure of compensation and of related-party transactions, may offer a sound starting point for the development of such an exception.

Second, the Commission will likely be required to determine how often public companies should be required to disclose corporate spending on politics to shareholders. Highly frequent reporting would be disruptive and costly for many companies, and the Commission should, where possible, use existing disclosure mechanisms to minimize the costs of the rule. Thus, although the exact design of the proposed rules is beyond the scope of this petition, we encourage the Commission to use the existing proxy-disclosure regime as the method for providing investors with this information.

Third, we expect that the Commission will determine the types of political spending subject to disclosure. In particular, the Commission may consider whether contributions that are restricted from political use will be subject to these rules. On the other hand, there are cases, such as corporate contributions to intermediaries that spend a large fraction of their funds on politics, for which inclusion within the scope of the Commission's rules seems warranted.²⁹ To address less obvious cases, the Commission may wish to adopt criteria for determining the types of spending subject to disclosure. Overall, the Commission should delineate the scope of the expenditures subject to disclosure to address potential problems of over- or under-inclusion.

* * * *

Shareholders in public companies have increasingly expressed strong interest in receiving information about corporate spending on politics, and such spending is likely to become even more important to public investors in the future. Furthermore, shareholders need to receive such information for markets and the procedures of corporate democracy to ensure that such spending is in shareholders' interest. Still, while many large public companies have begun to provide such information, no existing rule requires disclosure of this information to investors, and corporate political spending remains opaque to investors in most publicly traded companies. The Commission should address this lack of transparency and, drawing on its expertise and experience in designing rules for disclosure of other information that is of interest to investors, should adopt rules concerning disclosure of corporate political spending.

For these reasons, we urge the Commission promptly to initiate a rulemaking project to develop such rules. If the Commission or the Staff have any questions, or if we can be of assistance in any way, please contact our Committee's co-chairs: Lucian Bebchuk can be reached at (617) 495-3138 or via electronic mail at bebchuk@law.harvard.edu, and Robert Jackson can be reached at (212) 854-0409 or via electronic mail at robert.jackson@law.columbia.edu.

²⁹ For example, the United States Chamber of Commerce, which lists several large public companies as among its members, spent 42.8% of the funds it raised in 2008 on lobbying and politics. See Bebchuk & Jackson, *supra* note 20, at 94.

Sincerely,

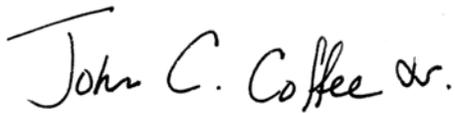
THE COMMITTEE ON DISCLOSURE OF CORPORATE POLITICAL SPENDING



Lucian A. Bebhuk, Co-Chair



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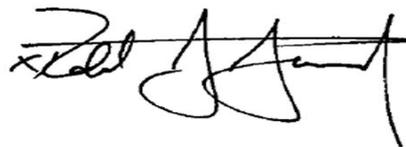
Jeffrey N. Gordon



Ronald J. Gilson



Henry Hansmann



Robert J. Jackson, Jr., Co-Chair



Donald C. Langevoort



Hillary A. Sale

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Thomas J. Kim, Chief Counsel and Associate Director, Division of Corporation Finance