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April 30, 2015

The Honorable Mary Jo White
Chair, Securities and Exchange Commission
100 F St. NE
Washington, DC 20549

Dear Chair White:

The Campaign Legal Center strongly urges the Securities and Exchange Commission (SEC) to act affirmatively on Petition 4-637, "to Require Public Companies to Disclose to Shareholders the use of Corporate Resources for Political Activities." The Petition was submitted in 2011 and has received a record-breaking 1.2 million supportive comments, yet the SEC has not responded to the petition. The SEC, which is charged with protecting shareholders, should take up this petition and move expeditiously to require publicly held companies to disclose their political spending to their shareholders.

While the Supreme Court recently struck down the prohibition on corporate and union independent expenditures (*Citizens United v. FEC*) and the limits on aggregate contributions (*McCutcheon v. FEC*), it has consistently upheld the importance of disclosure within our campaign finance system. As the Court has shifted on the issue of prohibitions and limits, beginning with its seminal campaign finance decision, *Buckley v. Valeo*, and continuing through its most recent decisions in this field, it has repeatedly and consistently upheld disclosure. Shareholder protection has been an underlying interest in campaign finance regulation since its inception.

In fact, Justice Anthony Kennedy's opinion in *Citizens United* relied on the ability of shareholders to use the "procedures of corporate democracy" to ensure that their "corporation's political speech advances the corporation's interest in making profits."

> Shareholder objections raised through the procedures of corporate democracy, see *Bellotti*, *supra*, at 794, and n. 34, can be more effective today because modern technology makes disclosures rapid and informative. A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today. It must be noted, furthermore, that many of Congress' findings in passing BCRA were premised on a system without adequate disclosure. See *McConnell*, 540 U. S., at 128 ("[T]he public may not have been fully informed about the

> sponsorship of so-called issue ads"); *id.*, at 196–197 (quoting *McConnell I*, 251 F. Supp. 2d, at 237). 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. 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." 540 U. S., at 259 (opinion of Scalia, J.); see *MCFL*, *supra*, at 261. 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.

Currently, however, most publicly traded companies do not disclose their political spending of their general funds to the public or even to their shareholders. A growing number of companies funnel money intended to support political activities through trade associations and 501(c)(4) social welfare organizations, neither of which are required to publicly disclose their donors.

As *The New York Times* editorialized in 2014:

> Basic investor protection requires that shareholders know how corporate money is spent. Good corporate governance requires executives to be transparent about their use of company cash. Ignoring the need for disclosure political spending won't make the need go away. It only makes the S.E.C. complicit in the corrupting system of unlimited campaign donations from unnamed donors.

Because of a lack of SEC rules, it is currently impossible for a shareholder to obtain accurate, timely information of a corporation's use of its treasury funds for political activities. With the upcoming 2016 elections, including the election for President, it is imperative for the SEC to respond meaningfully to the new political landscape created by a series of revolutionary court decisions that have radically changed the way shareholder interests are affected by political and electioneering activities.

The Campaign Legal Center urges you, as Chair of the SEC, to schedule action on Petition 4-637 and make the promulgation and implementation of a political activity disclosure rule a priority.

Sincerely,

Trevor Potter
President & General Counsel

Meredith McGehee
Policy Director