After *Citizens United*:

Improving Accountability in Political Finance

The Committee for Economic Development Subcommittee on Money in Politics

2011

CED Money in Politics Subcommittee

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Introduction

The vitality of our democracy is being sapped by a rising tide of political spending and a pervasive emphasis on money in the political process. Our political system has taken on the character of a permanent campaign in which elected officials are engaged in a continual chase for campaign dollars and interest groups raise and spend increasingly large sums to gain policy influence. The result is a political environment in which electoral concerns are predominant in policy deliberations and the need for campaign money too often shapes policy actions. Such a system does not serve the best interests of the nation or the business community.

Our nation faces a fiscal crisis. Government spending, driven by entitlement program expenditures, has produced long-term structural deficits that will continue unabated for years to come. The outlook for the federal budget is dismal. The nation is on a course of large and continuing budget deficits that will prove to be unsustainable. Even with a return to a robust economy, our nation's accumulated debt is projected to outpace Gross Domestic Product. Deficits of such magnitude and depth will erode long-term investment, productivity growth, and prosperity. They will "crowd out" investment (both public and private), deplete national savings, and likely cause interest rates to rise. Further, they will act as a delayed tax increase on future workers, who will have to contend with the consequences of overwhelming debt.

To stem this crisis, politically tough policy choices and major reforms, including reform of Social Security, Medicare, and other programs of government spending, are urgently needed. But such necessary actions are difficult—if not impossible—to achieve in the money culture that now exists on Capitol Hill. Elected officials spend increasing amounts of their time and energy raising money, which distracts them from the public's business and enhances the opportunities for access and influence on the part of monied interests. Interest groups and other organizations with a stake in policy decisions are encouraged to spend more of their own resources in hopes of achieving their legislative preferences. Politicians who hope to be reelected in this environment are compelled to focus on the political consequences of their actions more than the soundness of the proposals before them when making policy decisions. And they are driven to raise more money.

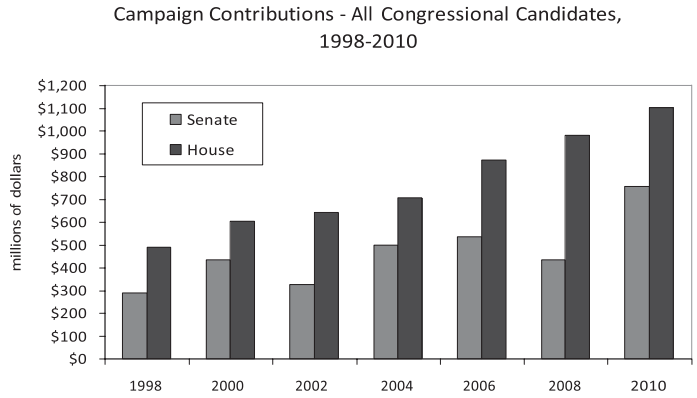
Moreover, as a result of changes in the ways election activities may be funded, the demand for political contributions from the business community is intensifying. The Supreme Court's recent decision in *Citizens United* v. *Federal Election Commission* struck down the long-standing ban on the use of corporate treasury funds for campaign expenditures. It also in effect struck down the similar prohibition on the use of funds from labor union treasuries. This decision enhanced the value of corporate and labor union donations, since these funds may now be used to finance advertising that advocates the election or defeat of federal candidates. This has led to greater demand for corporate and labor union dollars from political groups and nonprofit organizations engaged in political activity. That many of these organizations may use unlimited and undisclosed contributions in pursuing their political objectives makes the quest for donations particularly acute.

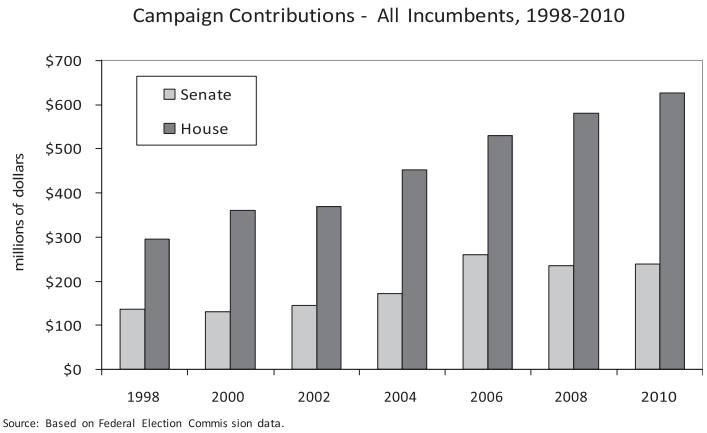
CED is deeply concerned about the changes taking place in political finance. Current practices promote a culture in which money is considered a requisite for political influence. They also undermine accountability, transparency and adherence to the rule of law, all of which diminishes essential safeguards against corruption and abuse in the political process. Furthermore, the use of corporate resources to promote a company's objectives raises fundamental governance issues for public and private companies, as well as for nonprofit organizations, labor unions, and other entities involved in efforts to influence elections. In our view, reform initiatives are needed to address the problems that plague the system and manage the risks inherent in the changing environment of political finance.

The Demand for Campaign Money

The rising emphasis on campaign fundraising is evident from the financial activity of congressional candidates in recent elections. Congressional fundraising has more than doubled over the past twelve years. In 1998, candidates for the House and Senate raised a total of $781 million. By 2008, campaign receipts had grown to $1.4 billion and in 2010 soared to almost $1.9 billion. Incumbents have led the way, as would be expected given their proven fundraising abilities and the desire of many donors to gain access to policymakers. In 1998, members of the House seeking reelection raised a total of $294 million. By 2010, House incumbents took in more than twice this amount, $626 million, despite the fact that the vast majority of House members hold safe seats and face little risk of defeat at the polls. Furthermore, these sums only include the contributions made to candidate campaign committees. They do not include the tens of millions of dollars that incumbent candidates help raise each year for the separate leadership PACs they sponsor, which have become a common vehicle for fundraising activities.[1]

The competition for campaign funds has encouraged bolder and more aggressive fundraising by elected officeholders and party officials. These efforts lead to behavior





and outcomes that we find offensive. The demand for campaign money places pressure on those who have particular interests in government policy to make contributions and spend money in support of those seeking public office. Prospective donors, particularly members of the business community, are encouraged to pursue political influence and engage in rent-seeking efforts that increase the risk of long-term interests being sacrificed for short-term gains. Members of the business community also face "shake downs" for political contributions or feel compelled to match—or exceed—the amount given by competing interests. For example, in a 2010 meeting with 80 corporate PAC leaders, one Republican Party official candidly put these leaders on notice by stating, "we're evaluating giving patterns." He admitted that he tells corporate donors, "I understand you have to give money to Democrats. But I want to be back in the majority. You don't have to give [this Democrat] $5,000. Give them $2,000. You can give $3,000 elsewhere. Now let me show you some open seats where you can make an investment" in a suitable candidate.[2]

The message from both sides of the political aisle is increasingly clear: If a company wants to voice its views on Capitol Hill, its case will be better heard if political contributions are made in support of its cause. In this regard, political contributions can be viewed as functioning in a manner similar to the "facilitation payments" required in some foreign transactions, where companies are expected to make payments to government or party officials in order to expedite the performance of otherwise routine government actions and duties. Although these payments are not considered bribery under United States law, they are an important means of influencing government action.[3]

Similarly, current fundraising practices promote a pay-to-play mentality that encourages political giving as a means of influencing legislative decision-making. Such efforts encourage donors to seek particular policy or regulatory benefits that may not serve the public's broad interests, or to contribute funds in order to avoid adverse consequences of legislative action. Donor influence also serves to undermine market forces by facilitating policies or regulatory requirements that diminish competition or unduly advantage particular firms or industries. Furthermore, the influence of money can sustain inefficient or outmoded businesses, thereby subverting and frustrating the creative innovation that encourages new investment, spurs business development, and keeps jobs and investment at home.

One does not have to look too hard to find examples of the conflicts of interest and abuse that can occur in this environment. For example, in the days before the vote on major financial reform legislation in December 2009, more than three dozen lawmakers on the two lead congressional committees responsible for the legislation either held or attended fundraisers, with much of the money raised coming from financial services firms and other donors with interests at stake in the bill's outcome. One representative even left the Capitol during the floor debate to attend a fundraiser, but returned in time to vote against a series of amendments.[4] This activity drew the attention of the Office of Congressional Ethics, which expressed concern about the "unacceptable appearance of a conflict," but no action was taken to discourage such activities.[5] Indeed, other than the timing of these events, the behavior was not unusual. According to an analysis conducted by the nonpartisan Sunlight Foundation, as of May 2010, members of the financial committees had held 845 fundraising events since taking office in January 2009, far more than the number held by members of other committees.[6]

Among the biggest beneficiaries of such fundraising efforts were the fourteen freshman Democrats who had been appointed to serve on the House Financial Services Committee. A report prepared by Citizens for Responsibility and Ethics in Washington, a nonpartisan group focused on ethics in government, found that these first-term legislators, most of whom faced competitive reelection contests, raised significantly more money than other first-term representatives. The group's director, Melanie Sloan, observed, "It's definitely not accidental. It appears that Congressional

leaders are deliberately placing vulnerable freshmen on the Financial Services Committee to increase their ability to raise money."[7]

These examples indicate why most Americans have concluded that money has an undue influence in the political process. Business leaders share this view. In a recent Zogby International survey of business opinion leaders conducted for CED, seven out of ten respondents said that corporate America contributes to political campaigns either to gain access to influence the legislative process (55 percent) or to avoid adverse legislative consequences (17 percent). Three out of five (61 percent) report that there is pressure placed on corporate leaders to make political contributions. And, in general, about half (48 percent) feel that the level of pressure being placed on business leaders to give has increased since the last the presidential election in 2008, while only 3 percent say the level of pressure has decreased.[8]

The demand from candidates for campaign dollars is only one source of the political pressure that business leaders face. Members of the business community are also asked to make contributions to organizations and political groups that are allowed to spend corporate money on election-related activities. This latter source of demand is of particular concern to CED, since we foresee that this problem will be exacerbated by the changes brought about by the Supreme Court's decision in *Citizens United.*

Citizens United: A New Political Arms Race?

In the 1947 Taft-Hartley Act, Congress prohibited corporations and labor unions from spending monies from their treasuries to finance federal election activities. This ban was adopted to strengthen the 1907 prohibition on corporate contributions to federal candidates and the corresponding ban on labor union contributions that was adopted as a provision of Taft-Hartley. In this way, Congress sought to ensure that the ban on contributions could not be circumvented simply by directly spending money in support of candidates. These restrictions became a cornerstone of federal campaign finance regulation and most state campaign finance statutes.

In 2002 Congress adopted the Bipartisan Campaign Reform Act (BCRA), also known as McCain-Feingold, which extended the ban on the use of corporate and labor union treasury funds to include ads that did not expressly advocate the election of candidates but qualified as "electioneering communications." An "electioneering communication" is defined as any broadcast advertisement aired within thirty days of a primary or sixty days of a general election that features a federal candidate and is targeted at a candidate's electorate. Any ad that meets these criteria could not be financed with corporate or labor union treasury funds. If a corporation or labor union wanted to sponsor such ads, it could do so by using PAC money, which is raised through voluntary individual contributions limited by law and disclosed to the public.

In 2010, the Supreme Court issued its highly controversial ruling in *Citizens United* v. *Federal Election Commission*, which overturned the long-standing prohibition on corporate expenditures—and by extension, labor union expenditures. This ruling also deemed the electioneering communication restrictions of BCRA unconstitutional, even though the Court had affirmed the constitutionality of BCRA's provisions only a few years earlier in *McConnell* v. *Federal Election Commission*.[9] (CED filed an amicus brief in the *McConnell* case and in *Citizens United* citing our concerns about unrestricted campaign funding.) Citizens United, a nonprofit advocacy group, filed the suit. The group had produced a feature-length film, *Hillary: The Movie*, which was severely critical of then-Senator Hillary Clinton, who at the time was a candidate for the Democratic presidential nomination. The group wanted to use its own funds, including some corporate contributions, to finance the advertising and distribution of the film, including distribution through a video-on-demand cable service. Citizens United brought a suit against the Federal Election Commission seeking to prevent the application of federal contribution restrictions and disclosure requirements to the monies used to support the film. The case thus began as a narrow dispute over whether *Hillary* qualified as an election advertisement or electioneering communication subject to the prohibitions of federal campaign finance law. But the Court eventually took up the much broader question of the constitutionality of the ban on corporate spending in federal elections.

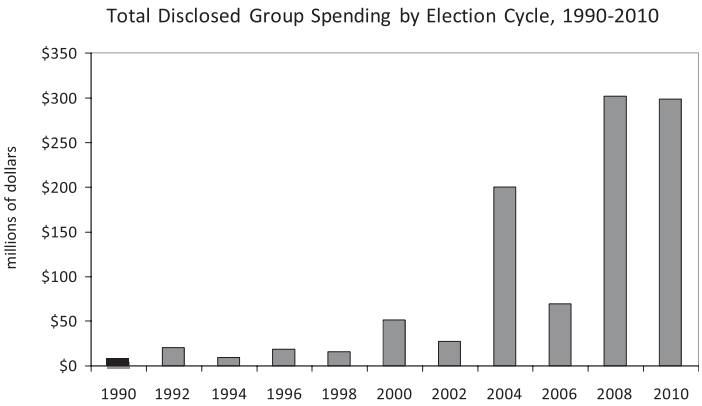
In a 5-4 ruling, the Court decided that corporations had the same right as individual citizens to spend money in federal elections, so long as the spending was done independently, meaning that it was not done in coordination with a candidate. In the view of the Court's majority, the First Amendment did not allow restrictions on speech based on the identity of the speaker. In reaching this decision, the Court rejected the argument that had been accepted previously as a basis for regulation: that corporate spending had a corruptive influence on the political process. The majority contended that past cases based on this notion had been wrongly decided. The Court held that independent expenditures, no matter how financed, do not pose a risk of corruption because no money is exchanged with a candidate, so there can be no quid pro quo. The Court therefore concluded that the government was justified in prohibiting corporate *contributions* to candidates, but not corporate *expenditures*.

Following the decision in *Citizens United*, the U.S. Court of Appeals for the District of Columbia issued its opinion in *SpeechNow.org* v. *Federal Election Commission*, a case that raised the question of whether a group that only made independent expenditures had to abide by federal contribution limits.[10] SpeechNow.org, an unincorporated nonprofit political committee, was organized for the purpose of solely making independent expenditures in elections. The group did not intend to make contributions to candidates, and wanted to avoid having to register as a political committee with the FEC and thus be restricted to the $5,000 per year contribution limit applied to federal PACs. Citing the Supreme Court's ruling in *Citizens United*, the court ruled that independent expenditures do not pose a risk of corruption and thus there was no government interest in limiting the contributions received or monies spent by a group like SpeechNow.org. Accordingly, groups that only intend to make independent expenditures may raise unlimited contributions from any permissible source, including corporations and labor unions, and spend these funds advocating the election of specific candidates for office.

Thus, in recent years, the courts have reversed course and overturned decades of campaign finance law. These judgments have opened new paths for the flow of unregulated money into our elections. Corporations, whether publicly held or private, for-profit or nonprofit, can now spend unlimited sums supporting or opposing candidates. So can labor unions, trade associations, political organizations and ad-hoc groups established by special interests. The effects were immediately apparent. Groups quickly organized to take advantage of the new opportunities to raise unlimited money from individuals, corporations, or labor unions. They included a number of groups with such innocuous sounding names as American Crossroads, American Action Network, American Future Fund, and Crossroads Grassroots Policy Strategies, all of which favored Republican candidates. In addition, labor unions and the U.S. Chamber of Commerce, now unleashed from restrictions, reached new heights in their political spending.

A number of the groups that formed were established as "independent expenditure only" committees so that they could raise and spend unlimited sums. These committees became known as "Super PACs." More than seventy of these new Super PACs registered with the FEC in 2010. These committees raised a combined $89 million. American Crossroads alone raised $28 million, with about a third of its funding coming from corporate treasuries.[11]

Election spending in support of candidates soared as a result, producing a flood of television and radio advertising. In all, political committees and other organizations reported spending $298 million on election advertising and other activities, or four times more than the $69 million reported in the 2006 midterm election. The top advertising spenders included the U.S. Chamber of Commerce ($33 million), American Action Network ($26 million), American Crossroads ($22 million), and Crossroads Grassroots Policy Strategies ($17 million). Labor unions also spent substantial sums supporting candidates. The Service Employees International Union reported $16 million in candidate spending, while the American Federation of State, County and Municipal Employees disbursed $13 million. The National Association of Realtors and National Education Association each spent $9 million.



Source: Center for Responsive Politics. Totals include the amounts reported to the Federal Election Commission for independent expenditures, electioneering communications, and communication costs.

A Business Agenda for Reform

In the aftermath of the 2010 elections, more groups are being established to take advantage of the unlimited funding permitted under *Citizens United* and *Speechnow.org*. Most notably, a number of pro-Democratic groups have been created to compete against the pro-Republican or conservative groups that were active in 2010. In fact, as of June 2011, more than 100 Super PACs had already registered with the FEC.[12] Industry trade associations and labor unions are also making plans to raise and spend substantially higher sums in the future. As a result, corporations and their executives will face greater pressure from interest groups, trade associations, and political committees to make contributions that can be used to influence elections and policy outcomes. Companies will also be encouraged to spend money directly in support of those seeking office, particularly if competing interests are doing so.

As we have said before, a vibrant and strong economy results from business competition in the economic marketplace, not in the political arena.[13] Unrestrained corporate political spending does not serve the interests of the business community. The demand for campaign dollars impairs

economic development and the fiscal health of the nation by promoting behavior that is not conducive to sustained value creation. Political competition entails an inherent risk that companies will be drawn into a political spending arms race, with no clear end in sight. Corporate resources that might be better spent investing in an enterprise or otherwise building shareholder value would then be diverted to political activities. We believe that such expenditures, particularly the multi-million dollar advertising campaigns now being financed by some organizations, can have a powerful influence on legislators, who will be mindful of the benefits of such spending or will want to avoid becoming a target of such campaigns. The current state of affairs thus encourages rent-seeking efforts and enhances the potential for corruption in the political process. It increases the emphasis on money, further diminishing the capacity of our representative institutions to develop the type of sound, long-term policies now needed to address the nation's most pressing problems.

A political process that promotes perceptions that government policies are open to the highest bidder is not in accord with the basic tenets of democratic government. Nor is it conducive to a strong business environment. If public policy decisions are made—or appear to be made—on the basis of political expenditures, policy will be suspect and its uncertain and arbitrary character will make business planning less effective and the economy less productive.

Political activity also exposes companies to substantial reputational and legal risks that endanger enterprise and shareholder value. These risks are particularly pronounced in the case of contributions made to third party groups where the donor does not exercise control over the ways that funds will be spent. In this regard, the experience of the Target Corporation is indicative of the problems that may result. The corporation made a contribution to an organization in Minnesota that promoted economic development. The organization supported a gubernatorial candidate whose policies they thought best suited the needs of the state's economy. But the candidate also supported other policies that did not align with the company's core values. When Target's contribution was made public, the company was widely criticized for supporting the organization, became the subject of an unfavorable media advertising campaign sponsored by a prominent national liberal group, faced calls for a consumer boycott, and was confronted with a shareholder resolution sponsored by institutional investors demanding that the company review its policies on political donations.[14] Target thereafter revised its corporate governance policies to provide more careful review and transparency in decisions about its corporate political spending. But the company had already incurred damage to its public image. Another national retailer, Best Buy, was also criticized for contributions made to the same Minnesota organization and it too was forced to revise its policies after shareholder resolutions were filed by investment funds calling for change.[15]

This example indicates the risks involved in political spending. Companies that make contributions to organizations they do not control face the possibility that these organizations will use the funds to support issues or candidates that do not conform to a company's values or interests, or that are not aligned with the interests of a company's clients, customers, or vendors. Even when organizations do use corporate resources to advance positions a company supports, the highly partisan or divisive character of election campaigns can lead to adverse responses from some segments of the public that may not benefit the long-term interests of a company or its investors. In other words, political contributions entail risks that can negatively impact a company's reputation or the value of an enterprise. In the extreme, such contributions may lead to serious breaches of business ethics, depending on the means by which contributions are solicited or the purposes for which money is given.

Viewed from a broader perspective, corporate engagement in political competition can damage public confidence and trust in corporate America by fueling perceptions that the business community exerts undue influence in the political process. Business leaders are cognizant of this problem and recognize the need for reform. In a Mason-Dixon Polling & Research Survey of corporate directors conducted for the nonpartisan Center for Political Accountability, two-thirds of the directors surveyed expressed the view that corporate scandals involving political activities have "damaged the public's confidence and trust in corporate America" and a majority (60 percent) agreed that reforms were necessary to "protect companies from risk."[16]

CED recognizes that corporations and members of the business community have a right to participate financially in the political process and that many may choose to do so. Such participation serves the values of good citizenship and civic engagement. It can also be beneficial for companies to take a constructive role in helping to inform and shape public policy debate, especially in those areas of policy that may clearly affect company interests. But the resulting financial activity should be carried out in a way that ensures appropriate deliberation and oversight. Most importantly, it should be conducted in accord with the basic principles of accountability and transparency. These principles are essential building blocks of a healthy democracy and important safeguards against the risks inherent in our system of campaign funding.

Ensuring Accountability Through Board Oversight

CED believes that corporations, labor unions and trade associations should act as responsible participants in the political process. We prefer that political activity by these organizations be conducted through a policy of direct expenditures rather than indirect spending through third party organizations. Direct expenditures made by corporate, labor or trade association PACs or drawn from treasury resources provide better accountability in the political process. Funds raised and spent by corporate, labor or trade association PACs are subject to contribution limits and public disclosure. Direct expenditures made in support of a candidate, either in the form of independent expenditures or electioneering communications, are also subject to public disclosure. These approaches promote accountability in political funding and provide voters with information on the source of funding behind the communications being distributed in an election.

CED considers political activity to be an important matter of corporate governance. Political donations and other political expenditures constitute a use of resources that can affect the value of an enterprise and economic development. These expenditures should be subject to the requisites of due diligence and accountability that generally apply to business matters. In our view, corporate directors have a duty to oversee political spending to ensure that contributions and other expenditures are properly assessed with respect to a firm's core values and interests. This is a basic risk management consideration that should be practiced by all corporations, whether publicly held or private. This principle and practice applies equally to the directors or executives of nonprofit corporations, tax-exempt associations, and labor unions. Any entity engaged in political activity should ensure proper oversight and transparency of political expenditures.

CED strongly supports appropriate board approval and oversight of political spending. Corporations should adopt policies that give directors the responsibility of reviewing and approving corporate political or public affairs budgets. This responsibility could be assigned to a committee specifically designed for this purpose or to an appropriate committee of the board, such as a budget, audit, or risk management committee. Similarly, the boards, executives, or leaders of labor unions and trade associations should adopt procedures to ensure appropriate review and approval of political budgets.

Companies should also establish policies and guidelines governing political contributions and spending. These guidelines should establish a process for review and approval of political expenditures. At a minimum, this process should ensure executive or managerial approval and monitoring of political expenditures and provide for some level of board oversight. The objective should be to ensure appropriate deliberation and diligence in approving political expenditures.

Appropriate and meaningful board oversight and governance policies are valuable means of providing effective monitoring and accountability of political expenditures made from corporate, union or trade association resources. For example, in the case of corporations, a well-framed governance policy can ensure that a company's assets are used for purposes that are aligned with a company's core values and promote a company's long-term interests. It facilitates risk identification and management, as well as compliance with specific regulations and the dictates of a company's code of ethics. It also provides a necessary element of accountability. Without meaningful director oversight and established guidelines, a company is poorly positioned to resist the inevitable pressures placed on a company and its executives to engage in political spending. A formal review and approval process ensures proper internal assessment of proposed expenditures and thus provides a safeguard against the risks inherent in political financial activity.

CED lauds the leadership and initiative demonstrated by those companies that have adopted corporate governance policies and provide board oversight of political spending. These companies include dozens of the nation's top publicly held corporations, including Aetna, Merck, Microsoft, Norfolk Southern, Exelon, American Electric Power and Prudential Financial. These companies exemplify the contribution that voluntary private sector initiatives can make in ensuring accountability in political activity. They demonstrate the way that market-based approaches can serve to address the problems and risks generated by the current dynamics of the campaign finance system.

We encourage directors and executives of corporations, labor unions, and trade associations to follow the lead of a diverse and growing group of America's leading corporations and adopt governing policies on political spending that include a board or executive oversight and monitoring process. These policies should include: a general statement of principles or code of conduct with respect to political contributions or expenditures on the part of the corporation, its executives, and employees; a process for oversight, managerial decision-making and operational control of political expenditures; and a policy concerning the disclosure of any political expenditures. Labor unions and trade associations should establish comparable policies for

the political contributions or expenditures made by their organizations, leadership, and members.

We recognize that the business community is characterized by great diversity, as are the other organizational communities that are now involved or in the future may be involved in political activity. So one model or one approach to the governance of political expenditures may not fit all. Companies have different cultures, levels of civic engagement, approaches to political involvement, and management practices. Some operate in industries that are subject to greater government regulation than others, while some are involved in enterprises that are subject to greater restrictions on political donations or political activity (for example, investment companies that have to abide by "pay-to-play" statutes that prohibit certain political contributions). Some companies rely on a corporate PAC as the vehicle for all of their political giving; others make contributions both through a PAC and from corporate assets. Some have adopted policies under which they do not make contributions to third party organizations; they restrict their political giving to candidates and party organizations. Some companies voluntarily disclose all of their politically related expenditures, including contributions to tax-exempt political committees, dues or contributions made to trade association groups, and monies spent on grassroots lobbying efforts or ballot initiatives, by making this information available on their company website or by including it in an annual report.

We call on members of the business community, labor leaders, trade association executives, and other organizational leaders to develop governance policies that address the concerns we have identified and ensure accountability and transparency in their election-related financial activity. In our view, a well-structured governance policy would include the following components:

- A statement of principles or code of conduct that sets forth guidelines for political contributions by a company, PAC, executives and employees that ensure that any political contributions or expenditures are aligned with a company's interests.

- Guidelines on political spending that set forth the basic approach to be employed with respect to political expenditures, such as whether a company will limit its spending to funds voluntarily contributed to a company-maintained political action committee or whether corporate treasury funds may also be used. Guidelines should establish a process for reviewing and approving political budgets and expenditures (in advance where feasible or certainly after the fact). Such guidelines should also identify the types of organizations that are appropriate recipients of a company's resources, especially with respect to independent non-party political organizations, tax-exempt organizations, or trade associations. As noted above, CED prefers an approach in which political financial activity is conducted through a PAC. For those companies that also approve the use of corporate treasury resources, we prefer direct contributions or expenditures by a company rather than expenditures done through a third party organization.

- A governance process that sets forth the responsibilities of managers and directors in the approval and oversight of political expenditures. This process should ensure appropriate deliberation and diligence in approving political expenditures. Most important, it should ensure an appropriate level of board oversight with regard to political spending, either by assigning this responsibility to a committee of the board and/or by providing a means of broader board engagement.

- A policy on the disclosure of political expenditures that ensures transparency in political spending. We strongly support full public disclosure of all political spending, including any contributions to candidates, party committees, political committees, and ballot initiative campaigns, as well as tax-exempt organizations and trade associations, that are made for the purpose of financing election-related activity that are not required to be disclosed under current federal or state campaign finance disclosure regulations. The best approach is to make information on political contributions that are not otherwise disclosed available on a company website on a regular basis. Another way of achieving transparency is to make contributions to political committees and other organizations with the proviso that recipients publicly disclose any contribution.

A recent research report issued by The Conference Board entitled *Handbook on Corporate Political Activity: Emerging Corporate Governance Issues* (available at The Conference Board website[17]) offers an informative review of the issues associated with the establishment of such policies, as well as examples of model codes based on those established by major public companies. Examples of the approaches companies have taken to ensure accountability and transparency of political expenditures are also available from the nonpartisan Center for Political Accountability, which has constructed a comprehensive database of the policies established by companies.[18] Visitors to the site can view the policies and disclosure reports filed by companies either on a company-specific basis or by economic sector.

Expanding Citizen Participation

Providing citizens with the information they need to make reasoned decisions is one way to promote a healthy democracy. Another is to provide citizens with the incentive to participate in elections, while offering candidates alternative means of funding campaigns that free them of the need to be beholden to large donors and special interests.

CED has previously called for the creation of a voluntary program of public matching funds in congressional elections and reform of the public funding system in presidential elections. We continue to support public financing as a campaign finance alternative. Specifically, we believe that a multiple dollar public match on low-dollar donations can have a substantial leveraging effect that would provide candidates with a strong incentive to seek out large numbers of small donations. At the same time, it would give small donors a greater sense of empowerment that would encourage them to become more involved in the financing of political campaigns. A system that provided three or four dollars for every dollar contributed by an individual who gave a low-dollar amount would increase the resources available to candidates. It would also reduce the relative influence of larger donors and private contributions that might be linked to special interests.

CED first proposed a multiple dollar public matching program in our 1999 policy statement, *Investing in the People's Business: A Business Proposal for Campaign Finance Reform*. We continued to support this approach in our subsequent policy statement, *Building on Reform: A Business Proposal to Strengthen Election Finance*. Once again, we affirm our support of public funding and suggest that Congress establish such a program. We note, however, that any new program of public funding should be accompanied by budget offsets that will cover the anticipated costs of the program.

Conclusion

America's representative democratic system of governance greatly depends on the strength of its institutions. Recently, these institutions have been challenged by an emphasis on electoral advantage, lack of accountability and transparency, and an explosion in financial contributions. Current practices in campaign funding do not serve the best interests of the nation or of the business community. They impair economic development, diminish the capacity of institutions to take the actions needed to address the nation's most pressing problems, undermine the rule of law, and diminish public confidence in government and corporate America.

CED has been at the forefront of efforts by business leadership to advance proposals to improve the health of our democracy. We will continue to work with leaders in the private and public sector to advance initiatives and policy solutions to address the problems generated by the role of money in our political process.

Notes

1 According to analyses of Federal Election Commission data conducted by the Center for Responsive Politics, there were 120 federal leadership PACs (including PACs sponsored by retired politicians) in 1998 and these committees contributed $11 million to federal candidates. By 2008, the number of leadership PACs had grown to more than 380 and contributed a total of close to $40 million to federal candidates. Summaries of leadership PAC activity can be found on the Center for Responsive Politics website. See http://www.opensecrets.org/pacs/industry.php?txt=Q03&cycle=2008 (accessed March 20, 2011).

2 Quoted in T. W. Farnum and Carol D. Leonnig, "Corporate PACs Betting on Republicans to Regain Control of Congress," *Washington Post*, May 22, 2010.

3 "Facilitating or Facilitation Payments" are defined by the Foreign Corrupt Practices Act as payments to a foreign official, political party or party official for the performance of routine government actions. Such payments are typically made to expedite the performance of an action and stand as one of the few exceptions from the anti-bribery provisions of the FCPA. See Stuart H. Deming, *The Foreign Corrupt Practices Act and the New International Norms*, 2nd ed. (American Bar Association, 2011) and Robert Bailes, "Facilitation Payments: Culturally Acceptable or Unacceptably Corrupt?" *Business Ethics: A European Review* 15:3 (2006), pp. 293-298.

4 Eric Lipton and Eric Lichtblau, "Fund-Raising Before House Vote Draws Scrutiny," *New York Times*, July 14, 2010.

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8 Zogby International, *Committee for Economic Development: October Business Leader Study*, October 2010. Survey results are available on the CED website at http://www.ced.org/news-events/campaign-finance-reform/561-press-release (accessed March 20, 2011).

9 *Citizens United* v. *Federal Election Commission*, 558 U.S. ___ (2010); *McConnell* v. *Federal Election Commission*, 540 U.S. 93 (2003).

10 *SpeechNow.org* v. *Federal Election Commission*, U.S. Court of Appeals for the District of Columbia, No. 08-205, March 26, 2010.

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13 See our previous policy statements, *Investing in the People's Business* (1999), p. 1, and *Building on Reform: A Business Proposal to Strengthen Election Finance* (2005), p. 3.

14 Jia Lynn Yang and Dan Eggen, "Exercising New Ability to Spend on Campaigns, Target Finds Itself a Bull's-Eye," *Washington Post*, August 19, 2010; Jennifer Martinez and Tom Hamburger, "Target Feels Backlash from Shareholders," *Los Angeles Times*, August 19, 2010.

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18 The Center for Political Accountability database can be found at: http://www.politicalaccountability.net/index.php?ht=d/ContentDir/pid/2960 (accessed May 15, 2011).

Committee for
Economic Development

2000 L Street N.W.
Suite 700
Washington, D.C. 20036
202-296-5860 Main Number
202-223-0776 Fax
1-800-676-7353

www.ced.org