

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NEW YORK STATE COMMON
RETIREMENT FUND,

Plaintiff,

v.

QUALCOMM INCORPORATED,

Defendant.

C.A. No. _____

VERIFIED COMPLAINT FOR INSPECTION OF BOOKS AND RECORDS

Plaintiff New York State Common Retirement Fund (“Plaintiff” or the “Fund”) brings this Verified Complaint (“Complaint”) against defendant QUALCOMM Incorporated (“Qualcomm” or the “Company”), seeking relief under 8 *Del. C.* §220 (“Section 220”), and alleging, upon personal knowledge or other information obtained upon investigation by it and its counsel that it believes to be true, as follows:

NATURE OF THE ACTION

1. The United States Supreme Court’s decision in *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010) (“*Citizens United*”), removed statutory restraints on the ability of corporate fiduciaries to expend shareholder funds in connection with political activities. Since *Citizens United* was decided, corporate political activity has increased significantly. As described below, recent studies indicate that corporate political spending in general is negatively correlated with enterprise value, and is indicative of more widespread control and governance deficiencies.

2. Writing for a majority of the Supreme Court in *Citizens United*, Justice Anthony Kennedy recognized the risk of unbridled corporate political spending, but justified overturning longstanding restrictions on corporate political speech by stating that shareholders can keep their fiduciaries in check as long as companies provide transparency into corporate political expenditures. Justice Kennedy explained that while “[t]he First Amendment protects political speech; ... disclosure [of political spending] permits ... shareholders to react to the speech of corporate entities in a proper way” and “determine whether their corporation’s political speech advances the corporation’s interest in making profits.”¹

3. A principal premise of the *Citizens United* decision to nullify statutory restraints on corporate political expenditures was that corporations would actually disclose to their shareholders their expenditure of corporate funds for political purposes or, at the very least, that shareholders would be able to exercise their statutory rights to obtain this information.

4. In fact, a significant number of the largest public companies in the United States have recognized the value of the transparency discussed in *Citizens United*. Even in the absence of a specific legal obligation requiring corporations to publicly disclose *all* their political expenditures, dozens of major public companies, set forth on Appendix A attached hereto, voluntarily disclose their use of corporate funds for political purposes, including contributions to state and federal candidates, political action committees (“PACs”), “Super PACs,” lobbyists, trade associations and other related endeavors. As recognized in *Citizens United*, and as explained below, legitimate shareholder concerns are raised when a company declines to disclose

¹ 130 S. Ct. at 916 (internal citations and quotations omitted).

its political expenditures, particularly after receiving a formal shareholder request to do so, which is the precise turn of events precipitating this Action.

5. Plaintiff is the third largest public institutional investor in the nation, with over \$150 billion in assets under management as of September 30, 2012. Plaintiff is also the largest public pension fund investor in Qualcomm stock (and among the largest institutional holders of the Company's stock), with an equity stake that is currently worth approximately \$378 million.

6. Shareholders have a strong interest in knowing how corporate funds are spent, especially in the political arena, in order to monitor the actions of corporate fiduciaries, to exercise responsible decisions when voting annually for the election of corporate directors, and to hold corporate fiduciaries accountable for their stewardship of the corporation. *Citizens United's* elimination of longstanding prohibitions against corporate political expenditures and the consequent increase in such expenditures have heightened the risk that corporate managers and fiduciaries could use corporate funds to achieve objectives which may be antithetical to the best interest of the corporation and its shareholders. That risk is further heightened when a company's senior management has a history of making significant political expenditures with their personal funds, and either consciously or innocently, may permit their personal political viewpoints to influence the way shareholder funds are allocated in the political arena. Moreover, as set forth below, academic studies have shown a negative correlation of corporate political spending levels with corporate value levels.

7. Without disclosure it is not possible for shareholders to assess the level of risk to their investments in a given company. Despite a prior request by Plaintiff and other institutional investors that Qualcomm publicly disclose its political giving, the Company has declined to do

so. More significantly, for purposes of this action, the Company has also refused to honor its obligation to make specified Qualcomm books and records available to Plaintiff.

8. On August 29, 2012, in accordance with Section 220, Plaintiff sent Qualcomm a proper demand to inspect certain books and records related to the Company's political spending. A copy of Plaintiff's Demand Letter is attached hereto as Appendix B. Despite repeated efforts to engage with Qualcomm to resolve the matter without litigation, which efforts are summarized below, Qualcomm has refused to provide Plaintiff with the requested materials.

9. Qualcomm's refusal to provide disclosure and its most recent denial of Plaintiff's request for access to relevant books and records pursuant to Section 220 only enhances the Fund's concerns about the way the company spends shareholder funds in the political arena.

10. Accordingly, Plaintiff brings this action under Section 220 to exercise its statutory right to obtain information about how Qualcomm is spending corporate funds in the political arena. Plaintiff seeks to determine whether Qualcomm's political expenditures have been consistent with the objective of enhancing stockholder value, rather than simply furthering the particular political beliefs and causes of Qualcomm's board members or senior management.

11. Because obtaining information about corporate political spending is reasonably related to Plaintiff's interest as a stockholder, it is a proper purpose as contemplated by Section 220. Plaintiff therefore seeks entry of an order permitting Plaintiff to inspect all documents responsive to the narrowly tailored and specific requests set forth in its Demand Letter.

THE PARTIES

12. As of the date hereof, Plaintiff is the beneficial owner of 6,121,990 shares of Qualcomm common stock, which shares are valued at over \$378 million, based on Qualcomm's

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closing stock price of \$61.86 on December 31, 2012. Plaintiff has continuously been a stockholder of the Company since at least January 1, 2010. Proof of Plaintiff's stock ownership as of August 29, 2012 is attached as Exhibit A to the Demand Letter.

13. Defendant Qualcomm is a Delaware corporation with headquarters in San Diego, California. Qualcomm designs, manufactures and markets digital wireless telecommunications products and services. The Company is a world leader in 3G and next-generation mobile technologies, with a market capitalization of over \$100 billion.

FACTUAL BACKGROUND ON CORPORATE POLITICAL SPENDING

Pre-Citizens United Limitations on Corporate Political Spending

14. Prior to the *Citizens United* decision, federal and state law imposed extensive restrictions on corporate political spending. As a result of these restrictions, corporate political spending was not as significant of a concern for shareholders as it is now.

15. In 1907, Congress passed the Tillman Act, which prohibited corporations from donating directly to candidates in federal elections. With the passage of the Taft-Hartley Act in 1947, Congress banned corporations from making independent campaign expenditures in support or opposition to federal candidates.

16. The United States Supreme Court upheld the ban on corporate spending on federal elections in *Buckley v. Valeo*, 424 U.S. 1 (1976). The Supreme Court upheld similar restrictions on the use of corporate funds in state-level elections in *Austin v. Michigan State Chamber of Commerce*, 494 U.S. 652 (1990).

17. In 2002, Congress passed the Bipartisan Campaign Reform Act (the "BCRA"), which, among other things, solidified the principle that corporations could only participate in the

electoral arena through PACs, which were themselves regulated. Section 203 of the BCRA (“Section 203”) closed a loophole pertaining to corporate funded advertisements that supported or opposed particular federal candidates.

Plaintiff’s Longstanding Focus on the Risk of Corporate Political Activity

18. Even before *Citizens United*, shareholders and directors alike generally recognized the risks posed by corporate political activity and the benefit of transparency of political expenditures.

19. In 2006, the Center for Political Accountability (“CPA”)² commissioned Mason-Dixon Polling & Research (“Mason-Dixon”) to survey 800 American stockholders regarding their beliefs about corporate political spending.³ Among other things, the survey revealed that:

- (a) 85% of shareholders polled agreed that “... the lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations;”
- (b) 73% of shareholders polled believed that corporate political spending is often undertaken to advance the private political interests of corporate executives rather than the interest of the company and its shareholders;
- (c) 87% of shareholders polled would have more confidence investing in corporations that have adopted reforms that provide transparency and oversight in political spending; and
- (d) 84% of shareholders polled wanted board oversight and approval of all corporate political giving.

² The CPA is a non-profit, non-partisan organization dedicated to bringing transparency and accountability to corporate political giving and activity.

³ The Center for Political Accountability, *Corporate Political Spending: A Survey of American Shareholders 20 (2006)*, available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/918> (last visited January 1, 2013).

20. Similarly, corporate directors have long recognized the risks posed by corporate political activity and the benefits of disclosure of political expenditures. In 2008, the CPA, along with the Zicklin Center For Business Ethics Research at the Wharton School (the “Zicklin Center”), commissioned Mason-Dixon to survey 255 corporate directors of Russell 2000 companies regarding, among other things, their attitudes toward oversight of political spending and activity.⁴ The survey revealed:

- (a) 66% of directors polled said corporate scandals involving political activities had “damaged the public’s confidence and trust in corporate America”
- (b) 63% of directors polled said that “political advocacy and spending by competitor companies or industries have resulted in instances of unfavorable legislative, regulatory or tax treatment of [their] company or industry;”
- (c) 38% of directors polled think that “lack of transparency and oversight of corporate political activity encourage behavior that poses legal and reputational risks to companies;” and
- (d) 88% of directors polled agreed that “corporations should be required to publicly disclose all corporate funds used for political purposes.”

21. Plaintiff itself has long recognized the risks to shareholder value that are posed by corporate political spending even at pre-*Citizens United* levels. Plaintiff has worked towards increasing transparency about such spending. Through its corporate governance efforts, the Fund highlights the importance of disclosure to holding fiduciaries accountable for political spending.

22. Plaintiff’s proxy guidelines dated January 2005 (attached as Appendix C) stated, in relevant part, that:

⁴ The Center for Political Accountability & Zicklin Center For Business Ethics Research, The Wharton School, Nationwide Survey of Members of Corporate Boards of Directors (2008), available at <http://www.politicalaccountability.net/index.php?ht=a/GetDocumentAction/i/919> (last visited January 1, 2013).

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The Fund will support proposals asking companies to disclose their political and charitable contributions.

Rationale: The Fund believes that proposals that require additional disclosure can enhance shareholder value by providing shareholders with information critical to informed decision-making.

23. In January 2011, Plaintiff adopted revised proxy guidelines (attached as Appendix D) noting that in addition to supporting disclosure proposals, “[t]he Fund will support proposals asking companies to put their political expenditures to a shareholder vote” because “an annual vote to ratify political spending is a reasonable way to promote greater transparency and accountability to investors.” The Fund has pursued and will continue to pursue proxy proposals recommending comprehensive disclosure of corporate political spending.

Citizens United: Expanding Corporate Political Activity While Assuming Transparency Will Mitigate the Risk of Abuse

24. In 2010, the United States Supreme Court’s *Citizens United* decision altered the landscape of corporate political spending in the United States, in part, by holding that the ban on corporate spending on elections violated the free speech rights of corporations.

25. In assigning to corporations nearly the full First Amendment protections of a natural person, *Citizens United* struck down the portions of the BCRA that prohibited expenditures on electioneering communications by corporations.

26. Among other things, Justice Kennedy noted that “*Austin* ... should be and now is overruled. ... No sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.” 130 S. Ct. at 913. Overruling *Austin* “effectively invalidate[d] ... BCRA Section 203” and eliminated the statutory “prohibition on the use of corporate treasury funds for express [political] advocacy.” *Id.*

27. Thus, *Citizens United* removed statutory restraints that prevented corporations from spending shareholder funds during elections, provided only that the expenditures are made “independently” of candidates.

28. *Citizens United* justified the rejection of certain restrictions on corporate political spending on First Amendment grounds, in part, by asserting that disclosure to shareholders of corporate political expenditures is a means by which shareholders can hold fiduciaries accountable:

Shareholder objections raised through the procedures of corporate democracy 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.... 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. 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 that give proper weight to different speakers and messages.

130 S. Ct. at 916 (internal citations and quotations omitted) (emphasis added).

29. Notwithstanding the Supreme Court’s assumption that corporations do or should disclose their use of shareholder funds for political purposes, other than with respect to lobbying expenses and PACs, federal law does not require corporations to affirmatively disclose all political spending.

Plaintiff’s Efforts to Achieve Greater Transparency of Corporate Political Spending

30. On February 24, 2010, the CPA, on behalf of itself and 44 institutional investors including Plaintiff and other members of the Council of Institutional Investors (“CII”), wrote to

430 companies in the S&P 500, including Qualcomm, urging each company to fully disclose its political spending (the “CII Letter”). A copy of the CII Letter sent to Qualcomm is attached hereto as Appendix E.

31. Among other things, the CII Letter requested that the companies (a) adopt policies and procedures for board approval and review of corporate political spending and (b) annually disclose all corporate political expenditures, including contributions made with corporate funds and payments to trade associations and other tax-exempt organizations that are used for political purposes.

32. Although Qualcomm failed to comply with the requests in the CII Letter or otherwise take actions to suggest that the Company recognized the value of greater transparency into how corporate funds are spent in the political arena, many other companies adopted comprehensive political spending disclosure policies. As shown on the attached Appendix A, 79 companies in the Fortune 500[®] have voluntarily agreed to disclose to their shareholders extensive detail about the corporation’s political expenditures. While each company has adopted policies tailored to its specific circumstances, the disclosure adopted by these companies is generally consistent, in words or substance, with the below definition of “Political Expenditures,” a definition utilized by Plaintiff in corporate governance initiatives pertaining to corporate political spending:

All monetary and non-monetary contributions and expenditures since January 21, 2010, that the Company intended to be used, or had reason to believe would be used, to participate in or influence public opinion with respect to any political campaign on behalf of or in opposition to any candidate for public office or any voter referenda ballot measures, including but not limited to all funds meeting the above description that were provided to any candidate, candidate committee, political organization, political party, business association, advocacy organization, educational group, media organization, political action committee, or any other comparable entity, whether or not it qualifies as a §501(c)(4) organization.

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**PLAINTIFF HAS A PROPER PURPOSE TO INSPECT BOOKS AND
RECORDS PERTAINING TO CORPORATE POLITICAL
SPENDING UNDER SECTION 220**

Post-Citizens United Increase in Political Spending Poses Economic Risks for Shareholders

33. In the wake of the *Citizens United* ruling, corporate political spending has increased significantly. Professor John Coates has published a research paper entitled *Corporate Politics, Governance, and Value Before and After Citizens United* (the “Coates Study”).⁵ According to the Coates Study, “[a]lthough *Citizens United* changed the law only for ‘independent expenditures’, registered lobbying and PAC activity by corporations jumped in 2010, in both frequency and amount.”⁶

34. Corporate political spending continued to increase during the recently concluded 2012 election cycle. According to the Center for Responsive Politics’⁷ OpenSecrets blog, during the 2012 election cycle, independent expenditures by outside groups⁸ exceeded \$1 billion, nearly seven times the total for all outside spending in 2008.⁹ While this figure includes various types

⁵ John C. Coates IV, *Corporate Politics, Governance, and Value Before and After Citizens United* (2012), J. Empirical Legal Studies, 9.

⁶ *Id.* at 3.

⁷ The Center for Responsive Politics (“CRP”) is a non-profit, non-partisan research group that tracks the effects of money and lobbying on elections and public policy. The CRP maintains a public online database of its information. The database is available at [OpenSecrets.org](http://www.opensecrets.org).

⁸ “Outside groups” means all political groups (*e.g.*, SuperPACs, unions, corporations, trade associations, etc.) aside from candidates and party committees.

⁹ *Outside Spending*, <http://www.opensecrets.org/outsidespending/index.php> (last visited January 1, 2013).

of contributors, corporations are believed to be a substantial driver of this increase in political spending.¹⁰

35. Corporate political contributions channeled through intermediaries like trade associations and political organizations created pursuant to Internal Revenue Code Section 501(c)(4) (“501(c)(4) organizations”) represent the least transparent aspect of this increase in political spending. According to a research paper by professors Lucian A. Bebchuk and Robert J. Jackson entitled *Shining Light on Corporate Political Spending* (the “Bebchuk Study”):

[T]hese intermediaries do not have to disclose either the identity of the corporations that make these contributions or the amounts that they contribute. As a result, there is no information in the public domain on how much of an intermediary’s funds, if any, was provided by a given public company.¹¹

36. The amounts spent in the political arena by these intermediaries, who are presumably funded in large part by corporations, are huge. The Bebchuk Study found that eight such intermediaries (Pharmaceutical Research and Manufacturers Association, U.S. Chamber of Commerce, American Petroleum Institute, America’s Health Insurance Plans, Business Roundtable, American Council on Life Insurance, Financial Services Roundtable, and National

¹⁰ The revelation that, in 2011 alone, insurance giant Aetna, Inc. donated \$4.05 million to the U.S. Chamber of Commerce and \$3 million to the American Action Network, an issue advocacy group which promotes conservative causes, strongly supports an inference that corporations are helping to fuel this increase in political spending. See Charles Riley, *Oops! Aetna Discloses Political Donations*, CNNMoney (June 15, 2012), <http://money.cnn.com/2012/06/14/news/economy/aetna-political-contributions/index.htm> (last visited January 1, 2013).

¹¹ Lucian A. Bebchuk and Robert J. Jackson, Jr., *Shining Light on Corporate Political Spending*, 101 Geo. L. J. 10 (2012).

Association of Manufacturers of the United States of America) alone spent a staggering \$1.56 billion on lobbying and other political activity between 2005 and 2010.¹²

37. Moreover, the boards of these intermediaries are dominated by active corporate executives. For example, an average of 66% of the board members of the eight above-mentioned intermediaries are also currently serving as public company executives.¹³ While corporate executives are free to donate their own money to secure a seat on the board of an influential trade association or 501(c)(4) organization, there is a concern that these executives may be using corporate funds to obtain and maintain their status as intermediary board members.

38. This increase in corporate political spending, especially through intermediaries, creates heightened risk that corporate managers and fiduciaries are using corporate funds to pursue their personal and/or political objectives or otherwise investing shareholder funds in political ventures that do not create shareholder value, without good faith analysis of whether such corporate expenditures are justified, and to the detriment of shareholder interests.

39. Academic and statistical studies reveal that political expenditures can and often do harm the economic interests of the corporation and its stockholders. In their research paper entitled *In Search of El Dorado: The Elusive Financial Returns on Corporate Political Investments*, professors Michael Hadani and Douglas A. Schuler investigated the relationship between corporate political activity and financial returns on a set of 943 S&P 1500 firms between 1998 and 2008.¹⁴ Hadani and Schuler found that corporate political investments are

¹² *Id.* at 11.

¹³ *Id.* at 13-15.

¹⁴ Michael Hadani & Douglas A. Schuler, *In Search of El Dorado: The Elusive Financial Returns On Corporate Political Investments*, Strategic Management Journal (2012).

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negatively associated with market performance and cumulative political investments negatively affect both market and accounting performance.

40. According to a study conducted by professors Rajesh Aggarwal, Felix Meschke, and Tracy Yue Wang, entitled *Corporate Political Donations: Investment or Agency?* (the “Aggarwal Study”), donations are negatively correlated with future excess returns:

[D]onations are negatively correlated with future excess returns. An increase in soft money and 527 Committee donations of \$10,000 is associated with a reduction in excess returns of 7.4 basis points in the following year. Similar to Yermack’s (2006) results for the personal use of corporate aircraft by CEOs, this reduction in shareholder value far outstrips the dollar value of the donations. ... To address endogeneity concerns, we instrument for donations and find similar negative associations between donations and returns.¹⁵ (Emphasis added)

41. The Aggarwal Study found that larger corporate political donations are “symptomatic of wider agency problems in the firm” and associated with poor corporate governance.

We find that better corporate governance (smaller boards, CEOs who are not also chairman of their board, less abnormal CEO compensation, larger block ownership, and larger institutional ownership) is associated with smaller donations.¹⁶

42. Moreover, the Aggarwal Study concluded that any contributions result in worse returns in the long-run than not donating at all.

For longer-horizon returns, we find no evidence of a positive effect of donating to winners in either presidential or congressional elections. Importantly, we generally find that donating to either winners or losers is associated with worse returns than not donating at all. ...¹⁷

¹⁵ Rajesh Aggarwal, Felix Meschke & Tracy Yue Wang, *Corporate Political Donations: Investment or Agency?*, AFA 2012 Chicago Meetings Paper (April 5, 2012) at 3-4.

¹⁶ *Id.* at 4.

¹⁷ *Id.*
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43. Additionally, the Aggarwal Study found that corporate political spending is not an investment in political capital. In other words, corporate political donations are not positively correlated with more favorable treatment from politicians.

We also consider the possibility that politicians may do favors for firms and then firms may donate to politicians. If so, a positive effect of political favors on firm returns may occur prior to donations. To address this, we examine returns for firms that start donating when there is a shift in political control, since these firms are unlikely to be donating in response to past favors. In this case, ***we still find a strong negative association between firm returns and initiating donations to a party that wins political control.*** Thus, our results cannot simply be driven by firms choosing to donate after political favors are bestowed. In addition, we examine a subsample of companies in industries that receive government contracts since, for these companies, donations are more likely to be an investment in political capital. ***We do not find evidence of hypothesized positive association between donations and returns.***¹⁸ (Emphasis added)

44. Similarly, professors Jeffrey M. Drope and Wendy L. Hansen wrote a research paper entitled *Futility and Free Riding: Corporate Political Participation and Taxation Rates in the United States* (the “Drope Study”) that supports the Aggarwal Study’s findings with respect to political donations not representing investments in political capital.¹⁹ The Drope Study found that:

Contrary perhaps to popular belief, or at least anecdotal illustration, we find after controlling for firm size and industry-level tax rates, among other controls, that ***there is no discernible effect of political spending on firm-level taxation:*** firms that spend more in an effort to affect policy generally or tax policy specifically are no more likely to benefit from lower tax rates.²⁰ (Emphasis added)

¹⁸ *Id.*

¹⁹ Jeffrey M. Drope & Wendy L. Hansen, *Futility and Free Riding: Corporate Political Participation and Taxation Rates in the United States*, 10 *Bus. & Pol.*, no. 3, art. 2, at 17 (2009).

²⁰ *Id.* at Abstract.

45. The Coates Study referenced above reached conclusions substantially similar to the Aggarwal Study and Hadani Study. Coates concluded that corporate political activity results in lower corporate value.

... firms that were politically active in 2008 had lower value in 2010 than other firms, consistent with politics at least partly causing and not merely correlating with lower value. Overall, the results are inconsistent with politics generally serving shareholder interests, and support proposals to require disclosure of political activity to shareholders.²¹ (Emphasis added)

46. Coates also determined that “[corporate political spending] correlates positively with measures of managerial agency costs” and “correlates positively with the significant fraction (11%) of large firm CEOs who gain post-CEO political office.”²² In other words, according to the Coates Study, some CEOs appear to be spending shareholder money to advance their own future political aspirations regardless of the best interests of the company.

47. Indeed, because even relatively modest political contributions can create significant personal benefits for the individuals who direct those expenditures – such as personal goodwill, enhanced social status, or aiding a corporate executive’s future run for office – political spending without public disclosure is an area rife with the risk of self-interested conduct or other abuse.

48. Professors Stephen Ansolabehere, James M. Snyder, Jr. and Michiko Ueda also concluded, based on a detailed event study, that firms that spend large amounts of money in the political arena did not enjoy excess returns as a result of that spending.²³

²¹ Coates Study at 1.

²² *Id.* at 25.

²³ Stephen Ansolabehere, James M. Snyder, Jr. and Michiko Ueda, *Did Firms Profit From Soft Money?* (January 2004), MIT Working Paper No. 04-11, at 1.
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49. Because of the heightened public focus on political activities, firms can suffer a strong negative reaction to a relatively small expenditure. For example, in 2010, Target Corporation (“Target”) donated \$150,000 to MN Forward, a political group supporting Minnesota gubernatorial candidate Tom Emmer, a staunch opponent of gay marriage. News of the donation triggered a severe backlash from many of Target’s employees, customers and the gay and lesbian community. The Human Rights Campaign took out a full page ad in the Minnesota *Star Tribune* criticizing the donation. Many private individuals created anti-Target Facebook pages and YouTube videos. In addition, this \$150,000 donation led to significant in-store protests and boycotts. Eventually Target issued a public apology, but not before the \$150,000 donation caused significant harm to the company’s reputation.

50. The capacity for outsized harm from political spending renders this category of corporate spending unlike routine business expenses or charitable giving by corporations. Material business expenses, as well as immaterial business expenditures with interested parties including directors and senior officers, are typically disclosed to shareholders under applicable federal and state disclosure laws. When public corporations spend money for charitable purposes, they almost inevitably tout such conduct, seeking to capitalize on the positive goodwill and other benefits they can enjoy by being perceived as a “good corporate citizen.” Moreover, corporations generally do not make charitable giving to causes that antagonize large segments of the public, so the risk that charitable giving could hurt shareholder value is unlike the risk that comes with political giving.

Qualcomm's Inadequate Disclosure of the Company's Political Spending Raises Legitimate Shareholder Concerns

51. Despite requests for increased transparency, Qualcomm continues to obscure its political spending. Qualcomm's website lacks meaningful disclosure regarding the Company's corporate giving. In fact, Qualcomm's public disclosure of its political spending is so deficient that the Company received a score of fifteen out of 72 on the 2012 CPA-Zicklin Index of Corporate Political Accountability and Disclosure (the "CPA-Zicklin Index").²⁴

52. The CPA-Zicklin Index is a comprehensive study detailing how the 200 largest companies in the S&P 500[®] disclose their political spending. The CPA-Zicklin Index scores companies based on metrics including:

- (a) Whether the company discloses its contributions to candidates, political parties, and 527 organizations;
- (b) Whether the company discloses its independent expenditures;²⁵
- (c) Whether the company discloses its payments to trade associations and other tax-exempt groups;
- (d) Whether the company discloses its contributions pertaining to ballot measures;
- (e) Whether the company archives its political spending reports on company's website;
- (f) Whether the company has a policy of board oversight over political spending; and

²⁴ The 2012 CPA-Zicklin Index of Corporate Political Accountability and Disclosure, <http://www.zicklincenter.org/collaborations/hills/CPA-Zicklin%20Index%20-%202012%20-%20report%20-%2009-18-12.pdf> (last visited January 1, 2013).

²⁵ According to 11 CFR 100.16(a), "the term independent expenditure means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents.

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- (g) Whether the company posts its political spending report on its website semi-annually.

53. Qualcomm's ranking on the CPA-Zicklin Index places the Company in the bottom half of the 200 largest companies in the S&P 500[®] with respect to disclosure of political spending.

54. The inadequacy of Qualcomm's disclosure is highlighted by comparing the Company's political spending disclosure with that of other companies that illustrate *Citizens United's* concept of transparency, such as Gilead Sciences, Inc. ("Gilead"). See Appendix F. Among other things, Gilead lists all trade associations to which Gilead pays more than \$25,000 in membership dues and discloses the portion of Gilead's dues being used for political purposes. Gilead also discloses all direct contributions to candidates for state and local office as well as all contributions to state and local political initiatives. Moreover, Gilead unambiguously informs shareholders that the company "does not make contributions to section 501(c)(4) organizations," one of the most common avenues for corporations to anonymously inject large sums of money into the political process.

55. Qualcomm's lack of disclosure does not reflect a lack of political expenditures on its part. According to data compiled by the CRP on its OpenSecrets website, Qualcomm spent more than \$4.7 million on federal lobbying efforts in 2012. As would be expected of a leading company in a regulated industry, Qualcomm maintains a Washington, D.C. office that is headed by a Vice President of Government Affairs, who manages the company's legislative agenda with respect to the federal government and the United States Congress.

56. Moreover, senior figures associated with Qualcomm, including the Company's current CEO as well as his father, the Company's founder and a Qualcomm director until 2012,

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are widely reported to be politically active and in recent years have donated more than \$2 million of their personal funds in furtherance of political purposes.²⁶ Indeed, Qualcomm's CEO has given the maximum donations permitted under law to his favored political candidates.²⁷ In addition, the Qualcomm employee PAC, which is required to disclose its own expenditures, receives - and in turn spends - considerable sums from Company personnel for use in the political arena.²⁸

57. While Plaintiff supports the right of individuals to spend their personal funds on their preferred political causes, Plaintiff, as a significant Qualcomm shareholder, is concerned that it cannot determine whether senior executives and directors of Qualcomm are spending corporate resources to support their favored political candidates or causes in a manner not focused solely on creating stockholder value. Qualcomm's lack of disclosure of political expenditures prevents Plaintiff from allaying that concern.

²⁶ See Laurie Bennett, *Qualcomm Billionaire Gives Big To Democrats*, Forbes, July 21, 2012, <http://www.forbes.com/sites/lauriebennett/2012/07/21/qualcomm-billionaire-gives-big-to-democrats/> (last visited January 1, 2013).

²⁷ See HuffPost Fundrace, http://fundrace.huffingtonpost.com/neighbors.php?type=name_address&lat=32.8718710000&oldest=1&lng=-117.2511170000&lname=Jacobs&fname=Paul (last visited January 1, 2013).

²⁸ See PACS – Qualcomm Inc. Summary, <http://www.opensecrets.org/pacs/lookup2.php?strID=C00339085> (last visited January 1, 2013).
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Plaintiff's Demand for Qualcomm's Books and Records

58. Because Qualcomm is not voluntarily disclosing its corporate political spending to stockholders and Plaintiff has a proper concern about Qualcomm's involvement in the political arena, Plaintiff served the Company with the Demand Letter on August 29, 2012.

59. The materials requested in the Demand Letter, attached as Appendix B hereto, were narrowly defined and targeted. Specifically, the Demand Letter requested:

1. Documents sufficient to identify the Company's Political Expenditures since January 21, 2010.
2. Documents sufficient to identify (a) the date of each of the Company's Political Expenditures since January 21, 2010, (b) the recipient of such Political Expenditures, (c) the amount of such Political Expenditures, and (d) the candidate, party or group for which the Company intended or had reason to believe the Political Expenditures would be used.
3. Documents sufficient to identify the portion of the Company's payments to or expenses incurred in connection with trade associations and other tax exempt groups, such as 501(c)(4)s, that are used for Political Expenditures.
4. All minutes of any regular or special meeting of the Company's Board, or any committee thereof, since January 21, 2010, where any political cause, candidate or initiative, or Political Expenditure generally, was discussed, approved or reviewed, and the materials related to those meetings, which relate to the political cause, candidate or initiative at issue.
5. Documents sufficient to identify the business purpose of any of the Company's Political Expenditures, including, but not limited to, any corporate policies respecting Political Expenditures.

60. Plaintiff's demand was made for a proper purpose. As detailed in the Demand Letter, the purposes of the demand are as follows:

... [R]eviewing and assessing Qualcomm's Political Expenditures and policies and procedures relating thereto; evaluating whether the Political Expenditures are consistent with the objective of enhancing stockholder value; and evaluating

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whether the current directors are exercising appropriate oversight over Political Expenditures and whether they are suitable to stand for reelection. ...The Fund also makes this demand for the purpose of evaluating whether the Board's oversight and disclosure of political spending complies with its fiduciary duties.

61. If provided with the requested information, Plaintiff can, among other things, assess whether the Board and senior management have properly overseen the use of corporate funds for political purposes. Depending on what this information shows, Plaintiff may seek to pursue a proxy initiative through which shareholders generally can press the Board to provide greater transparency into the Company's political spending. If the Board has failed to properly control and oversee corporate political spending, Plaintiff may pursue available remedies, including withholding votes for one or more candidates for Board seats, encouraging other shareholders to withhold their support for such candidates, seeking to remove one or more directors from the Board, or seeking judicial relief for misconduct or waste of corporate assets.

62. On September 6, 2012, Qualcomm sent Plaintiff a letter responding to the Demand Letter. A copy of the Company's response is attached hereto as Appendix G. Qualcomm's letter asserted that "*Qualcomm will not be providing the records and documents requested,*" but provided no substantive explanation of the reasons that the Company did not believe Plaintiff's demand satisfied the requirements of Section 220. (Emphasis added).

63. The Company's denial of Plaintiff's demand also stated that the Company "is willing to engage in an appropriate discussion with a representative of the Fund with respect to certain matters relating to Qualcomm's political expenditures and related disclosures."

64. While making clear that engagement in a discussion alone would not satisfy the pending requests in the Demand Letter, Plaintiff repeatedly tried to schedule a call between representatives of the Fund's corporate governance department and the relevant decision-makers

at the Company. Qualcomm, however, adopted a variety of tactics to delay engaging with the Fund. Plaintiff's multiple efforts to engage with Qualcomm regarding the Company's political spending disclosure practices are summarized in the letters between Plaintiff's counsel and Qualcomm's counsel, attached hereto as Appendices H, I and J.

65. After six weeks of delay, Qualcomm finally agreed to have a call with the Fund on October 22, 2012. The call revealed that the Company did not intend to enhance its disclosure practices in any meaningful way. Qualcomm's intended future disclosures left significant loopholes in the information to be reported, including with respect to contributions to intermediaries like trade associations and 501(c)(4) organizations. Moreover, when pressed for when Qualcomm expected to implement changes to its disclosure practices, the representatives of the Company refused to provide any timeframe.

66. As of the date of this Complaint, Qualcomm has not implemented any of the limited shareholder disclosure reforms the Company described during the October 22 phone call.

67. Even if Qualcomm had agreed to fully disclose its political spending on a prospective basis (which it has not), Plaintiff still has legitimate concerns about Qualcomm's historic involvement in the political arena and the only way to address these concerns is by providing Plaintiff with the documents requested in the Demand Letter.

CLAIM FOR RELIEF

68. Plaintiff repeats and realleges each and every allegation above as if set forth in full herein.

69. The Demand Letter complied with the requirements of Section 220 with respect to the form and manner of making a demand for the examination of the books and records of the Company.

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70. Plaintiff's purposes for demanding access to certain of the books and records of Qualcomm are proper and reasonably related to Plaintiff's interests as a stockholder of the Company.

71. The Company has refused to provide Plaintiff with the books and records demanded.

72. Plaintiff is entitled to receive copies and/or inspect the books and records demanded in the Demand Letter.

WHEREFORE, Plaintiff respectfully requests that the Court enter judgment in its favor and against the Company (i) compelling the Company to permit immediate inspection and copying of the books and records specified in the Demand Letter; and (ii) granting Plaintiff such further relief as the Court deems just, including reasonable attorneys' fees and costs incurred in pursuing this action.

DATED: January 2, 2013

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