



Corporate Reform Coalition

Sunlight for Shareholders

Accountability for Corporate Political Spending

August 2012

corporatereformcoalition.org

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Democracy Through Accountability

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www.corporatereformcoalition.org

Acknowledgements

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About the Corporate Reform Coalition

More than 75 organizations make up the Corporate Reform Coalition, and while each group works on a diverse array of issues, the causes of transparency and accountability in democracy bring them all together. From good governance groups to environmental groups, organized labor to elected officials, institutional investors to academics, the CRC seeks to promote corporate governance solutions to combat undisclosed money in elections. We believe both the market and our democracy are strengthened through transparency, and we are pursuing a variety of strategies to ensure that voters and shareholders are never left in the dark.

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Introduction

In January 2010, the Supreme Court ruled in *Citizens United v. FEC* that corporations could spend unlimited amounts to influence elections.¹ The decision, which upended a century's worth of laws restricting or prohibiting corporate electioneering, was predicated on the Court's assumptions that corporations would disclose their election expenditures and that shareholders would provide oversight on the wisdom of such spending.

But when *Citizens United* was handed down, it was immediately evident that neither mandatory disclosure requirements nor meaningful mechanisms for shareholders to influence their corporations' electioneering spending were in place.

Although the law required organizations that spent money directly on elections to disclose their expenditures, corporate managers seeking to conceal their activities from the public or their shareholders could simply funnel their money to third-party groups.

The lack of transparency not only contradicted *Citizens United's* promise that the public could evaluate corporate-funded messages based on the credibility of their sponsors, but also foreclosed shareholders from weighing in on election spending. In the absence of meaningful disclosure, shareholders simply cannot know if their corporations are spending money to tilt elections, let alone judge whether such investments are wise.

Even if shareholders were able to learn of their corporation's political spending, *Citizens United's* assumption that corporate democracy

“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.”

- SUPREME COURT JUSTICE ANTHONY KENNEDY

mechanisms would allow shareholders to impose checks and balances was also incorrect. Nearly all shareholder votes are non-binding. Even in the face of an overwhelming vote for a certain policy, management may either ignore the proposal or water down the measure.

In theory, the threat of divestment could compel corporations to alter their political spending practices. But without effective disclosure rules, shareholders are deprived of information that might cause them to decide to remove their funds or to share their concerns with management. And on a practical level, divestment would not be possible for many of the largest institutional investors because their assets are held in passive index funds. Any divestment campaign would need the participation of large investors to succeed.

The most far-reaching proposal, in circulation in various incarnations, is to amend the Constitution to overturn *Citizens United* as well as other relevant cases. Such amendments would restore some or all of the public's right to establish laws limiting election expenditures.

A second proposal would require organizations

that spend money to influence elections to reveal the sources of their funding. The DISCLOSE Act, first introduced in 2010, would require third-party electioneering groups to reveal their contributors' identities. It passed the House of Representatives in 2010 but failed by one vote to overcome a filibuster in the Senate. The bill was reintroduced in both the House and Senate in 2012.

The Corporate Reform Coalition has focused on corporate governance solutions. Although their details vary, several legislative and regulatory proposals would require publicly traded corporations to disclose their election spending and, in some proposals, to obtain shareholder approval for it. Less ambitious efforts would require approval by a corporation's board of directors, but not shareholders.

There are several avenues to accomplish these reforms. The broadest is for Congress to pass the Shareholder Protection Act, which would require publicly traded corporations to obtain their shareholders' consent to spend resources on elections and to reveal the details of their actual electioneering spending. The disclosure aspect of this proposal could also be achieved through a Securities and Exchange Commission (SEC) rulemaking. In addition to legislative and administrative remedies at the federal level, bills are moving through state legislatures. State bills have the potential to act as templates for national rules, although they may apply only to in-state corporations.

Finally, the Coalition has worked to support the growing trend among large corporations to adopt voluntary policies regarding their electioneering spending. These typically consist of agreeing to obtain board approval to spend money on elections and to reveal the details of such spending. Voluntary disclosure regimes vary from company to company and therefore do not create a comprehensive disclosure system. But the trend toward voluntary adoption is gradually creating a consensus that board

FACT: 77% of surveyed business leaders said corporations should disclose all direct and indirect political spending.

- COMMITTEE FOR ECONOMIC DEVELOPMENT, 2010

approval and disclosure of political spending is a best practice in corporate governance. As these views become further ensconced in the corporate ethos, resistance to comprehensive legislation or rulemaking may diminish.

Rules governing electioneering spending by publicly traded corporations will not address all of the effects of *Citizens United*. Spending by individuals or privately held corporations would not be affected. And even for publicly traded companies, such rules are limited to setting policies which increase transparency but do not prohibit corporations from spending money to influence elections.

Because the *Citizens United* decision is a matter of constitutional law, only a reversal of the decision or an amendment to the Constitution would allow a reinstatement of laws prohibiting corporations from spending money from their treasuries to influence elections.

But the imperative remains to require corporations to disclose their political spending and serve their shareholders' interests. *Citizens United* relied on an assumption that such rules were in place. The Court was mistaken, but Corporate Reform Coalition intends to make the assumption a reality.

Objectives and Activities

“Shareholders require uniform disclosures regarding corporate political expenditures for many reasons, including that it is impossible to have any corporate accountability or oversight without it.”

- SEC COMMISSIONER LUIS AGUILAR

The Corporate Reform Coalition, created in response to *Citizens United*, aims to empower shareholders to hold corporations accountable for their electioneering activities. More than 75 organizations and entities participate in some way with the Coalition, ranging from good governance groups, environmental organizations, organized labor, investor advocates, public officials and legal scholars, to institutional investors managing more than \$1.5 trillion in assets.²

The Coalition is pursuing a variety of strategies to promote transparency and accountability in corporate political spending. It is advocating state and federal legislative proposals, seeking a rulemaking by the Securities and Exchange Commission, pursuing agreements from corporations, and championing shareholder resolutions that demand disclosure, and in some cases, more.

On the federal level, some Coalition partners are pushing for the Shareholder Protection Act (SPA), which would require corporations to receive approval from shareholders before spending money on elections and to disclose the details of the spending. Some Coalition partners also support the federal DISCLOSE Act. The House version of the bill includes disclosure provisions similar to those in the SPA³ but also would mandate comprehensive disclosure for all entities that spend money to influence elections, not just publicly traded corporations.

The Coalition also is coordinating several state campaigns for measures that are patterned after the SPA or the DISCLOSE Act.

In addition, the Coalition is pushing the Securities and Exchange Commission (SEC) to issue rules requiring disclosure of corporate political spending. In August 2011, 10 prominent law professors (some of whom belong to the Coalition) submitted a petition to the SEC urging the agency to require publicly traded companies to disclose their political spending.⁴ Due to Coalition efforts, the SEC has received more than 260,000 comments from individuals and organizations in favor of this rulemaking.⁵ This is the highest number of comments an SEC proposed rulemaking has ever received. In addition, in February 2012, SEC commissioner Luis Aguilar voiced his support for the proposal called for in the petition, pointing out that no mechanism exists to facilitate the disclosure referenced by the Supreme Court in *Citizens United*.⁶

The Coalition is also working to increase the number of corporations that voluntarily disclose the details of their election spending. These efforts range from informally requesting that corporations disclose their electioneering activities, to helping to publicize shareholder resolutions around political spending filed by institutional investors such as Trillium Asset Management and Green Century Capitol Management, and supported by groups like the Sustainable Investments Institute, the Center

for Political Accountability and the Coalition for Accountability in Political Spending (CAPS). The number of political disclosure measures has risen sharply in recent years, and this season disclosure will make up one-third of all proxy votes concerning social and environmental policy matters.⁷

Beyond disclosure efforts, the Coalition is also looking at companies to highlight best practices and target bad actors at company shareholder meetings where resolutions calling on the companies to refrain from political spending are being considered.

Young People for the American Way and the Student Public Interest Research Groups have targeted Bank of America, and efforts are already under way at four universities in California as well as Howard University in Washington, D.C., to pressure Bank of America to refrain from political spending. Bank of America has been one of the largest spenders on lobbying and political contributions among commercial banks,⁸ and it does not disclose any contributions from its treasury to trade associations or independent expenditure groups.

In addition to Bank of America, the Coalition has targeted 3M and Target and is supporting resolutions filed at both. Both organizations came under fire in 2010 for contributing to MN Forward, a group that ran ads in support of Tom Emmer, a gubernatorial candidate who opposed same sex marriage.⁹ The public lashed out against the corporations over their support of Emmer and his controversial views, and though Target made some superficial changes to its political spending policies, much more is needed.¹⁰

Goals of the Corporate Reform Coalition*

1. Pass the federal Shareholder Protection Act and the DISCLOSE Act

The SPA would require corporations to receive approval from shareholders before spending money in election; the DISCLOSE Act would require groups spending \$10,000 on election-related advertising disclose all donors who gave \$10,000 or more.

2. Pass state legislation similar to the SPA and DISCLOSE Act

State legislation modeled after federal legislation could apply to companies incorporated in the state or to companies who do business in a state.

3. Secure a rulemaking from the Securities and Exchange Commission

Such a rule would require publicly traded companies to disclose political spending.

4. Support shareholder resolutions calling for companies to refrain from spending or to acquire shareholder approval

Disclosure resolutions are seeing increased support from shareholders and institutional investors.

5. Secure voluntary pledges from corporations to refrain from spending in elections or to disclose spending

100 companies have adopted political disclosure policies at the request of the Center for Political Accountability.

*Because of the diverse nature of the Coalition every group does not necessarily support all of the above goals.

The Legal Rationale for Restrictions on Corporate Political Spending

The *Citizens United* decision was predicated on the mistaken assumption that the identities of the corporations spending money to influence elections would be promptly disclosed and that shareholders would evaluate the wisdom of political spending by their corporations.

Justice Anthony Kennedy, the decision's author, wrote:

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. 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.¹¹

The disclosure regime envisioned in this passage did not exist when *Citizens United* was handed down, and it does not exist now.

Organizations that fund broadcast electioneering messages must identify themselves but are not required to disclose their funders. Therefore, corporations seeking to keep their spending secret can simply contribute to other organizations, such as the U.S. Chamber of Commerce, that do not disclose their funders. In 2010, the first elections after *Citizens United*, about half of the money spent by third-party organizations (those not officially connected to candidates) went undisclosed.¹²

Contrary to another assumption in *Citizens United*, shareholders do not enjoy much power to influence their corporations' political

Top 10 Outside Spending Groups, 2010 Election Cycle		
Group	Amount Spent	Source Disclosed?
U.S. Chamber of Commerce	\$31,207,114	No
American Crossroads	\$21,553,277	Yes
American Action Network Inc.	\$20,935,958	No
Crossroads Grassroots Policy Strategies	\$16,660,986	No
American Future Fund	\$9,610,700	No
Americans for Job Security (AJS)	\$9,005,422	No
SEIU COPE	\$8,340,028	Yes
American Fed. of State, County and Municipal Employees (AFL-CIO)	\$7,378,120	No
60 Plus Association	\$7,096,125	No
National Rifle Association of America Political Victory Fund	\$6,702,664	Yes

Source: Public Citizen's analysis of Federal Election Commission (FEC) data.

spending even if they are aware of it. Currently, investors' power is primarily limited to casting non-binding votes in hopes of persuading a board to act on their wishes.¹³

Approaches to Ensure Disclosure and Shareholder Approval of Corporate Electioneering Spending

Several proposals to improve shareholders' voice in their companies' political activities have been put forth since *Citizens United* was issued. The most sweeping proposal is the federal Shareholder Protection Act (SPA), which would require corporations to disclose their election spending and put their political budget before shareholders for approval.

Another important initiative began at the Securities and Exchange Commission with a petition by a bipartisan group of academics urging the commission to institute a disclosure regime for corporate political spending. Also, measures similar to the Shareholder Protection Act and the DISCLOSE Act have been introduced in numerous states and already have passed in two states.

In addition, a long-term campaign led by the Center for Political Accountability and numerous socially responsible investment funds has sought over the years to compel corporations to adopt voluntary political disclosure policies. This campaign has consisted of asking corporations to adopt the policies and filing shareholder resolutions that permit investors to vote on disclosure proposals. It has met with increasing success.

Federal Shareholder Protection Act

The Shareholder Protection Act was introduced in the House of Representatives in 2010. It has been reintroduced in the current Congress in both the House and Senate.¹⁴

The bill would require CEOs of publicly traded companies to obtain shareholder approval

of a yearly political spending budget before spending company resources on electioneering activities. It also would require that specific campaign expenditures in excess of \$50,000 be ratified by corporate boards of directors. Finally, it would require corporations to disclose the details of their electioneering spending on the Web and to the Securities and Exchange Commission.¹⁵

Securities and Exchange Commission Petition

In August 2011, the Committee on Disclosure of Corporate Political Spending, which consists of 10 prominent law and business professors, submitted a petition to the SEC calling on the commission to “develop rules to require public companies to disclose to shareholders the use of corporate resources for political spending.”¹⁶

The petitioners did not all agree on whether political spending is beneficial or detrimental to corporations. “We differ in our views on the extent to which corporate political spending is beneficial for, or detrimental to, shareholder interests,” they wrote. “We all share, however, the view that information about corporate spending on politics is important to shareholders—and that the Commission’s rules should require this information to be disclosed.”¹⁷

The petition was not prescriptive. It did not recommend precise types of spending to be disclosed or frequency of disclosure. Instead, it argued that a rulemaking requiring disclosure was within the mandate of the SEC and in the best interests of shareholders.

Signers included Harvard law professor Lucian Bebchuck; Northwestern University law professor Bernard S. Black; Columbia law professor John C. Coffee, Duke law professor James D. Cox; Stanford law professor Ronald J. Gilson; Columbia law professor Jeffrey N. Gordon; Yale law professor Henry Hansmann; Columbia law professor Robert J. Jackson Jr.; Georgetown law professor Donald C. Langevoort; and Hillary Sale, professor of law at the Washington University in St. Louis School of Law.¹⁸

“The view that when corporations are able to obtain favorable conditions through political influence, rather than meritoriously adding value through a better product or service, it distorts the operation of the marketplace...”

- SEC COMMISSIONER LUIS AGUILAR

Since the petition was filed in August, a large volume and range of comments have been submitted to support it. At the publication of this paper, more than 260,000 supportive comments had been received by the SEC. The comments have come from large investors worth billions under managements, the former CEO of the major mutual fund Vanguard, state treasurers, more than 55 supportive members of the U.S. House and Senate, good government groups, small business organizations, civil society groups, corporate governance experts, economists, lawyers, unions, and members of the public.

In February 2012, SEC Commissioner Luis A. Aguilar announced in a speech that he supported compulsory disclosure of political activities by publicly traded corporations, saying, “Shareholders require uniform disclosures regarding corporate political expenditures for many reasons, including that it is impossible to

have any corporate accountability or oversight without it.”¹⁹

Aguilar also offered a broader argument for disclosure: that unchecked political influence harms the market as a whole, irrespective of whether individual companies benefit. “The view that when corporations are able to obtain favorable conditions through political influence, rather than meritoriously adding value through a better product or service, it distorts the operation of the marketplace, which undercuts capital formation,” Aguilar said.

State Actions

State laws can build momentum for a federal measure. One limitation of state laws is that they generally apply only to corporations incorporated within their boundaries. Some advocates have proposed laws that would create requirements for corporations doing business in a given state.

In March 2010, Iowa passed a law in response to *Citizens United* that prohibited corporations from making independent expenditures to influence elections without the authorization of a majority of the entity’s board of directors, executive council or similar organizational leadership body.²⁰

The Iowa law may be more symbolic than pragmatically effective. The measure was limited to regulating “independent expenditures,” the legal term for third-party electioneering spending that “expressly advocates the nomination, election, or defeat of a clearly identified candidate.”

The express advocacy standard can easily be evaded by crafting political messages that praise or criticize a candidate without using “magic words”—such as “vote for” or “vote against”—that the courts have recognized as denoting express advocacy. The Iowa law also does not appear to cover contributions that corporations make to trade associations or

other groups that may, in turn, use such money for electioneering purposes.²¹ Such “indirect” electioneering spending is by far the most common way in which corporations spend money to influence elections.

In April 2011, Maryland passed a law that requires corporations or unions that spend \$10,000 or more in an election cycle advocating for or against a candidate to report information about their expenditures to the state Board of Elections and to inform their shareholders or members of the expenditures. The law also

broadened the definition of electioneering activities beyond the express advocacy standard by also including electioneering communications, defined as broadcast, cable or satellite communications that refer to a clearly identified candidate and are disseminated within 60 days of an election.²²

Shareholder protection campaigns are also under way in California, Connecticut, Colorado, Illinois, Iowa, Maine, Massachusetts, Michigan, New Mexico, New York, and Pennsylvania.

Shareholder Approval Law in the United Kingdom

The United Kingdom has had rules similar to the proposed Shareholder Protection Act since 2000. In 2000 and again in 2006, the U.K. amended its Companies Act to put strict shareholder disclosure and approval provisions in place for corporate spending.²³

Under current U.K. law, if a company donates £2,000 (the equivalent of about \$3,000) or more to a political party or candidate, it must disclose the amount and the recipients in its annual report to shareholders and to the Election Commission. If a company wishes to donate £5,000 (about \$8,000) or more, it must have shareholder approval. If the shareholders reject the proposal, the company cannot make the expenditures for four years.²⁴ Shareholders do not have to approve every expenditure the company makes. Instead the managers propose a political expenditure budget, and shareholders hold an up-or-down vote on the entire sum.²⁵

A director who donates without approval is directly liable to the company for the amount spent, with interest, and must compensate the company for any loss or damage that results from the unapproved expenditure.

The amendments were made in response to growing public concern that major corporations

had undue influence on the political parties through large donations. The public was concerned that corporate money was paying for access to policy makers, special commercial considerations and appointments.

These suspicions were amplified by a series of scandals. In one instance, Formula One Racing was exempted from a blanket ban on tobacco sports sponsorships after donating £1,000,000 to the Labor party and meeting with Tony Blair.

The effects of the amendments to the Companies Act have been mixed. While 49 companies adopted policies banning corporate spending on political speech after the amendments, many new companies began spending.²⁶ This once again highlights the need for new rules driven by legislation similar to the U.K.

Shareholders voted to approve corporate political expenditure budgets almost every time one was proposed. On average, 94 percent of individual votes cast were favorable. In addition, companies often sought approval to spend much more than they actually spent. Between 2001 and 2010 companies requested to spend £85.6 million but spent only £42 million. Only £10.2 million came from publicly traded companies.²⁷

Voluntary Approaches to Corporate Disclosure

One ongoing effort to alter corporate political spending policies and compel corporations to adopt voluntary policies has been a campaign spearheaded by the Center for Political Accountability (CPA) and a number of socially responsible investment groups.

This campaign has sought to persuade companies (typically from the S&P 100) to disclose their political expenditures. The campaign generally has not sought to convince companies either to eschew political spending altogether or to seek shareholder approval of political spending budgets.

At this point 100 companies have adopted political spending disclosure policies. [See Appendix A]

Another effort, led by New York City Public Advocate Bill de Blasio, seeks companies' agreement to refrain altogether from spending money to influence elections. De Blasio has conducted outreach to members of the S&P 500 and has 11 signatories. [See Figure 1]

De Blasio also leads the Coalition for Accountability in Political Spending (CAPS), a group composed primarily of state treasurers, comptrollers and other public officials with fiduciary responsibilities for public pension funds. The group aims to "pressure corporations to strengthen their political spending policies through a combination of direct engagement, pension fund activism, contracting reform and legislation at the state and local level."²⁹

CAPS member and New York State Comptroller Tom DiNapoli announced in February 2012 that three major California companies—Pacific Gas and Electric (PG&E), Safeway and Sempra

"A secret flow of hundreds of millions of dollars from companies to campaigns is bad for business's reputation, bad for innovation, bad for job growth, and bad for our democracy."

- CED PRESIDENT CHARLES KOLB

Figure 1: S&P 500 Corporations Pledging Not to Spend Money From Their Treasuries to Influence Elections

Citigroup	Xerox Corporation
Colgate-Palmolive	General Electric
Dell	Gilead
IBM	Morgan Stanley
JP Morgan Chase	Goldman Sachs
Microsoft	

Source: Public Advocate for the City of New York

Energy—agreed to disclose their indirect political spending.³⁰

CPA and the Zicklin Center for Business Ethics Research at The University of Pennsylvania have also ranked companies in the S&P 100 based on their level of transparency in political spending. [See Appendix B]

Voluntary Disclosure: A Step In The Right Direction

Increased adoption of voluntary policies may build a general consensus that disclosure of political spending is a best practice, but voluntary activities do not hold the promise of a permanent, comprehensive solution. This is true for numerous reasons:

Many voluntary policies do not call for disclosing the most important information, such as contributions to third-party organizations. The primary manner in which corporations spend money to influence elections is by contributing to trade associations or other third-party groups that, in turn, make electioneering expenditures. Many voluntary disclosure policies permit dues or contributions paid to trade associations to remain secret. Some require disclosure only for the portion of dues that a trade association explicitly uses for “express advocacy,” meaning urging the public to “vote for” or “vote against” a candidate. Agreeing to disclose contributions used for express advocacy often proves meaningless because trade associations typically do not engage in express advocacy. The U.S. Chamber of Commerce, for instance, reported spending more than \$30 million on advertisements, more than any other outside group, in the run-up to the 2010 elections but did not report any express advocacy spending.³¹

Voluntary disclosures are rarely timely. Many companies’ disclosure policies call for reports to be issued annually. Such disclosures are far removed from elections. Disclosure of election spending is most valuable on a monthly, weekly or even daily basis as Election Day draws near.

There is no enforcement of voluntary policies. If companies do not adhere to their stated policies, the public has no recourse to compel compliance.

Many of the companies that have adopted voluntary policies have fallen behind in publishing disclosure reports. For instance, insurance company Aetna was one of four companies to receive “best of disclosure” honors from the Center for Political Accountability. But the award stems from its promises, not its practices. The most recent disclosure form Aetna has posted (as of May 2012) is from 2009. Aetna’s head of government relations told Public Citizen in December 2011 that production of an updated report was delayed because the individual who previously created them had retired.³² Aetna currently has 33,278 employees.³³

Further, Aetna reportedly was one of six insurance companies that contributed at least \$10 million combined to America’s Health Insurance Plans (AHIP) in the summer of 2009 to finance ads opposing proposed health care legislation.³⁴ Despite Aetna’s pledge to disclose trade association contributions for both electioneering and lobbying activities, no multimillion-dollar payments to AHIP are reported on Aetna’s 2009 disclosure form.³⁵

Inconsistent reporting criteria and formats. Voluntary disclosures are also decentralized and highly variable, both in format and in the nature of the information disclosed. Further, companies often remove older forms when they publish updates. These characteristics render it almost impossible to conduct quantitative analyses of the spending.

Despite the flaws in individual company policies, the trend towards voluntary disclosure should help pave a pathway for more comprehensive reforms through an SEC rulemaking or the passage of the Shareholder Protection Act.

Business Organizations and Leaders Support Guidelines on Corporate Political Spending

Aside from individual companies' promises to disclose, some business leaders and business organizations have championed proposals to require disclosure of corporate spending, board approval or shareholder approval, or have offered support for the general theory underlying these proposals.

Committee for Economic Development Supports Disclosure

The Committee for Economic Development (CED), a venerable business organization made up of about 200 current and retired senior corporate executives and university professors, has endorsed principles calling for board oversight of electioneering spending.

"Don't Give, But If You Do, Disclose."

- CED PRESIDENT CHARLES KOLB

"CED considers political activity to be an important matter of corporate governance," the organization wrote in a 2011 report assessing the effects of *Citizens United*.³⁶ The report continued:

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.³⁷

CED President Charles Kolb was more outspoken. "A secret flow of hundreds of millions of dollars from companies to campaigns is bad for business's reputation, bad for innovation, bad for job growth, and bad for our democracy," he said.

"Corporate America can take the lead in the corporate campaign spending crisis by sending one message to every business, big and small: 'Don't Give, But If You Do, Disclose.'"³⁸

Conference Board Encourages Companies to Adopt Political Spending Policies

The Conference Board, a business membership and research organization, has counseled corporations to establish policies on political spending:

Companies that adopt robust approval and oversight policies that cover the full range of corporate political activity and accountability are better positioned to avoid the serious financial, legal, and reputational risks associated with political spending while protecting shareholder value and promoting the company's best interests. Any corporation participating in political activity without a rigorous governance oversight process heightens its risk exposure.³⁹

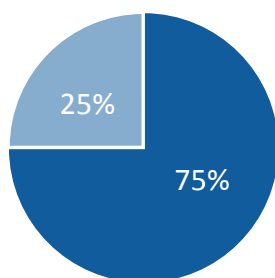
Under these circumstances, the corporation

is at risk with respect to compliance with applicable laws and regulations, its reputation, its business strategies, and its culture and values. Beyond meeting minimal regulatory requirements, companies must consider how to steer clear of any unanticipated consequences attached to their political activities.

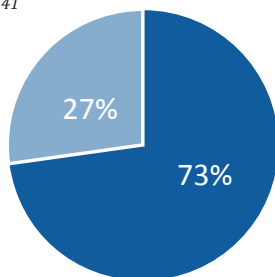
Majority of Business Leaders Support Disclosure

A 2008 survey conducted by Mason-Dixon Polling and Research and commissioned by the Center for Political Accountability found that out of 255 corporate directors:

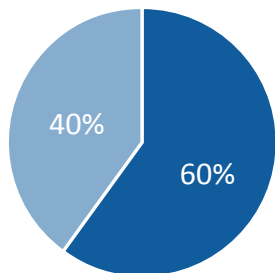
*75 percent supported disclosure of payments to trade associations used for political purposes;*⁴⁰



*73 percent incorrectly believed that corporations were required to report all their political spending;*⁴¹

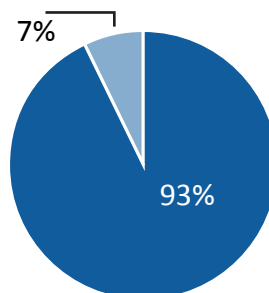


*60 percent supported board oversight or approval of all political spending;*⁴²

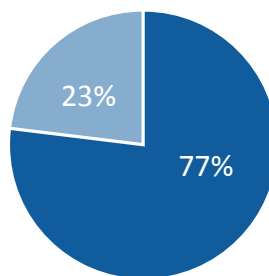


In 2010, the CED released a poll of 301 business leaders on campaign finance issues:

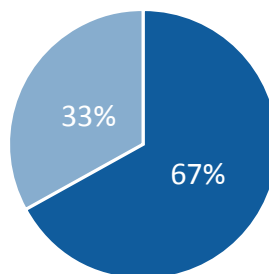
*93 percent said that corporate boards should be informed of the beneficiaries and purposes of the company's direct and indirect political spending;*⁴³



*77 percent said corporations should disclose all of their direct and indirect political expenditures, including money provided to third-party organizations to be spent on campaign ads; and*⁴⁴



*67 percent agreed that "the lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations."*⁴⁵



Increasing Support for Board Approval and Disclosure of Corporate Spending

Increasing Shareholder Support

Citizens United mistakenly assumed that shareholders could control their corporations' political spending "through the procedures of corporate democracy."⁴⁶ In reality, the rights afforded to shareholders under corporate democracy procedures are completely inadequate.

Shareholders are generally limited to requesting that certain resolutions be placed on a corporation's proxy statement prior to its annual meeting. The resolutions are subject to approval by the Securities and Exchange Commission, and the results of shareholder votes on resolutions are merely advisory to the board.⁴⁷

In short, corporate democracy, at present, does not resemble what most people think of as democracy.

Nonetheless, shareholders have insisted on dozens of proxy votes on corporate political spending disclosures during the past decade. In 2011, political issues became the second-most prevalent topic among proxy votes held on social and environmental issues.⁴⁸ In 2012 political spending disclosure is the topic for one-third of all votes in this area.⁴⁹ The success of such votes has steadily increased, from an average of 9 percent favorable votes in 2004 to 33 percent in 2011. [See Figure 2]

Increasing Institutional Investor Support

Institutional investors such as mutual funds and pension funds hold about 70 percent of

Figure 2: Average Vote in Favor of Political Contribution Disclosure Resolutions

Year	Vote
2004	9%
2005	10%
2006	20%
2007	23%
2008	26%
2009	29%
2010	30%
2011	33%

Sources: Conference Board and Center for Political Accountability.

FACT: 73% of corporate directors incorrectly believed that corporations were required to report all political spending.

- CPA SURVEY, 2008

the shares of stock in the 1,000 largest publicly traded companies.⁵⁰ In votes on shareholder resolutions, these funds cast ballots on behalf of their shareholders. Therefore, proxy votes can rise or fall based on the decisions of institutional investors.

Traditionally, except for those with an explicit mission to promote corporate responsibility, mutual funds have been reluctant to vote for measures calling on management to abide by certain policies regarding political spending.

For example, the proxy guidelines of the Vanguard Group, one of the largest fund managers, call for abstaining from corporate and social policy issues. “These decisions should be the province of company management unless they have a significant, tangible impact on the value of a fund’s investment and management is not responsive to the matter,” Vanguard’s policy reads.⁵¹

This policy contradicts the views of Vanguard Group founder John C. Bogle. In January 2012, Bogle wrote to the SEC recommending that the commission adopt rules prohibiting corporations from making political contributions without the approval of shareholders possessing 75 percent of the their outstanding shares.

“I recommend a supermajority requirement because of the inevitably wide range of views in any shareholder base,” wrote Bogle, who is no longer affiliated with Vanguard. “As it happens, 75 percent is halfway between a simple majority and the standard (under earlier Delaware corporate law) requiring a unanimous shareholder vote to ratify a gift of corporate assets (arguably, precisely what a political contribution is).”⁵²

Although few, if any, money management funds are willing to adopt Bogle’s position today, there is evidence that money managers are becoming more receptive to proposals calling for disclosure and board approval (although not necessarily shareholder approval) of corporate political spending. The average vote in favor of shareholder proposals calling for enhanced transparency and oversight in 2011 was 33 percent, more than four times the amount in 2004, the year they were first introduced.⁵³

In that year, fund managers Charles Schwab, Morgan Stanley and Legg Mason withheld their votes (effectively voting no) on political disclosure resolutions at least 98 percent of the time. By 2010, they voted in favor of such

resolutions 96 percent of the time (Schwab), 87 percent (Morgan Stanley) and 78 percent (Legg Mason).⁵⁴

These trends toward fund approval of corporate political spending disclosure policies will likely continue. Institutional Shareholder Services (ISS), which is generally considered the most influential advisor to money managers on proxy issues, recommended in 2011 that managers approve proposals for disclosure of political spending.⁵⁵

Some pension funds for public employees also have taken steps in favor of disclosure. In 2011, the California Public Employees’ Retirement System (CalPERS) and the California State Teachers’ Retirement System (CalSTRS), which manage about \$366 billion, began to ask companies to provide annual disclosure of their political expenditures, including those made to third-party organizations.⁵⁶

The New York City Pension Fund likewise favors disclosure and has put forth proxy initiatives urging companies to adopt such policies. In May 2011, shareholders of Sprint Nextel cast 53 percent of votes in favor of a measure submitted by the New York City Pension Fund.⁵⁷ The measure called on Sprint Nextel to report its policies and procedures for political contributions and expenditures (both direct and indirect) made with corporate funds; account for company’s funds that are used for political contributions or expenditures; and identify the people in the company who make the decisions on political contributions.

Corporations May Not Benefit From Spending Money On Elections

Many assume that corporations must benefit from making political expenditures. Otherwise, why would they spend the money? But a growing body of evidence suggests that corporations that eschew spending money to influence the political process enjoy higher stock prices than similarly positioned companies that engage in political spending.

For example, Rajesh Aggarwal and colleagues found in 2011 that companies that made soft money donations to political parties or to Section 527 committees from 1991 to 2004 had worse stock performance than those that did not.⁵⁸ Harvard professor John Coates found in 2010 that firms active in politics—whether through company-controlled PACs, lobbying or both—had lower price/book ratios than industry peers that were not politically active. This finding held true in every election cycle from 1998 to 2004.⁵⁹ Other studies have reached different conclusions. For instance, Cooper et al. in 2010 found that companies sponsoring very active PACs in the period of 1979 to 2004 had on average higher stock returns than industry peers in the following year.⁶⁰

Divergent conclusions on the correlation between political spending and outcomes are not surprising because studies on the question are sensitive to small differences in methodology. But the existence of any evidence that political spending might not benefit companies suggests that shareholders should be empowered to scrutinize and police political spending more closely.

Critics of corporations spending money from their

treasuries to influence elections often allege that CEOs make such expenditures in service of their own political philosophies, not to further the interests of the company. For example, Vanguard founder John C. Bogle supported his call for shareholder say on corporate political spending by writing to the SEC:

Past experience also suggests that corporate managers are likely to try to shape government policy in a way that serves their own interests over the interest of their shareholders. (For example, corporate managers have opposed most attempts to limit executive compensation, despite the clear evidence that out of sync compensation linked to short term performance was a big factor in the crash and that CEO pay needs robust reform.)⁶¹

Similarly, Harvard professor Lucian Bebchuck, et al., wrote in 2009:

We argue that the interests of directors and executives may significantly diverge from those of shareholders with respect to political speech ... Political spending might often have consequences that are exogenous to the firm's performance, and directors' and executives' preferences with respect to such spending might be influenced by these consequences. Thus, a divergence of interests may arise with respect to many political issues that corporations may choose to influence.⁶²

Disclosure Requirements Reduce Companies' Risk

Spending money to influence elections can be risky business, especially for companies that directly serve consumers. In 2010, for instance, Target Corp. made a \$150,000 contribution to MN Forward, an electioneering group that supported candidates it deemed pro-business.

MN Forward, in turn, ran television ads supporting Tom Emmer, the Republican nominee for governor in Minnesota. Emmer opposed gay marriage and the rights of gay couples to adopt children. Target, in contrast, had a reputation for adopting policies friendly to gay and lesbian employees, including its provision of benefits for same-sex partners. Target had received a perfect score in the Human Rights Campaign's Corporate Equality Index, which rates corporations on their policies on sexual-preference issues (for instance whether they have LGBT-inclusive nondiscrimination policies and training).⁶³

MN Forward disclosed Target's contribution under a Minnesota law requiring electioneering organizations to disclose their funders. After news of the contribution came to light, Target became the target of a vigorous protest campaign.

MoveOn.org, which has worked with the Corporate Reform Coalition, sponsored a boycott of Target and distributed a petition with Common Cause, which attracted 245,000 signatures. "I won't shop at Target until it stops spending money on elections. Companies like Target should stay out of elections," the petition said.⁶⁴ On the day the petition was delivered, hundreds of protesters demonstrated outside of Target stores around the country.

FACT: 67 % of business leaders agreed that "the lack of transparency and oversight in corporate political activity encourages behavior that puts corporations at legal risk and endangers corporate reputations."

- COMMITTEE FOR ECONOMIC DEVELOPMENT, 2010

The day before the protests Target apologized to its employees for the contribution. "While I firmly believe that a business climate conducive to growth is critical to our future, I realize our decision affected many of you in a way I did not anticipate, and for that I am genuinely sorry," Target CEO Gregg Steinhafel wrote in a letter to employees.⁶⁵

In February 2011, Target modified its policy on political contributions. Among the changes, Target created a committee of senior executives to oversee decisions on financial support for electioneering. "These changes are really reflective of that perspective that we gained over the 2010 election cycle," a Target spokesman said.⁶⁶

The Target episode bolsters the argument for compulsory disclosure because such requirements impose discipline on companies to ensure that they will take care in making decisions over electioneering expenditures.

Conclusion

Measures to give shareholders information and a vote on publicly traded companies' election spending are justified in part because the Supreme Court's decision to bless such spending was based on an assumption that disclosure-based checks and balances were already in place.

But even in the absence of the Supreme Court's rationale, the measures are warranted because shareholders own publicly held companies. A company's owners should control how the company spends their money on politics. Disclosure of a corporation's recent electioneering spending is plainly needed to permit shareholders to make educated decisions on whether to approve proposed budgets for future electioneering spending and to enable them to make choices about where to invest their money.

Chances are, resistance to most aspects of shareholder protection proposals would evaporate if not for the opposition by trade associations and other organizations that ultimately make the bulk of third-party electioneering expenditures. These organizations use their role in elections to increase their profile and influence and to raise money. For example, when President Obama raised a proposal to require federal contractors to disclose the details of their political spending, the U.S. Chamber of Commerce spearheaded the opposition.

Actual corporate directors do not oppose requirements of disclosure or board approval of electioneering expenditures. In fact, many are under the false impression that such requirements are already in place. Common sense dictates that they be made so.

Appendix A

Corporations that Have Adopted Policies Calling For Some Form of Political Spending Disclosure			
Adobe Systems	Aetna	Aflac	Alcoa
Altria	American Electric Power	American Express	Amgen
Avon	Baxter International	Boston Scientific	Bristol-Myers Squibb
Capitol One	Campbell Soup	Chevron	Chubb
CIGNA	Coca Cola	Colgate Palmolive	Computer Sciences Corp.
CSX Corp.	Cummins	Dell	Devon Energy
Dominion Resources	Donnelley, R.R. & Sons	Dow	DuPont
eBay	Eastman Kodak	El Paso	Eli Lilly
EMC	Entergy	Exelon	FirstEnergy
General Dynamics	General Electric	General Mills	General Motors
Gilead Sciences	Goldman Sachs	Halliburton	Hartford
Health Net	Heinz	Hershey	Hewlett-Packard
Home Depot	Humana	Intel	International Paper
Johnson & Johnson	Limited Brands	Lockheed Martin	Marriot International
(Massey Energy)	McDonald's	Medtronic	Merck
MetLife	Microsoft	Monsanto	Morgan Stanley
Norfolk Southern	Oracle	Pentair	PepsiCo.
Pfizer	Praxair	Proctor & Gamble	Prudential Financial
Pulte Group	Reynolds American	Safeway	Sempra Energy
Staples	Starbucks	State Street	Southern
Target	Tenet Healthcare	Tesoro	Texas Instruments
Time Warner	Unisys	UnitedHealth Group	United Parcel Service
United Technologies	Unum	US Bancorp	Verizon
WellPoint	Wells Fargo	Weyerhaeuser	Williams
Wisconsin Energy	Xcel Energy	Xerox	Yum! Brands

Source: Center for Political Accountability. Corporations that have subsequently merged with other entities are listed in parenthesis

Appendix B

2011 CPA-Zicklin Index of Corporate Political Accountability and Disclosure							
Top Tier	Score	Second Tier	Score	Third Tier	Score	Bottom Tier	Score
Colgate-Palmolive	100	Cambell Soup Co.	72	Norfolk Southern Corp.	50	3M Co	24
Exeleon Corp.	100	Intel Corp.	72	Avon Products	48	Raytheon Co	22
IBM Corp.	100	Microsoft Corp.	72	Chevron	48	The Bank of New York Mellon Corp.	22
Merck & Co Inc.	100	Schlumberger Ltd.	72	Monsanto Co.	46	Kraft Foods Inc.	20
Johnson & Johnson	92	United Technologies Corp.	72	Abbot Laboratories	44	Xerox	20
Pfizer Inc.	92	Amgen Inc.	68	American Electric Power	44	Allstate Corp.	16
UPS Inc.	88	News Corporation	68	Bristol-Myers Squibb	44	Apple Inc.	16
Dell Inc.	84	ConocoPhillips	64	Citigroup Inc.	44	Caterpillar Inc.	16
Wells Fargo & Co.	84	General Electric Co.	64	Home Depot Inc.	44	Comcast Corp.	16
EMC Corp.	84	Proctor & Gamble	64	Morgan Stanley	44	JP Morgan Chase & Co.	16
MetLife Inc.	84	Hewlett-Packard Co.	62	Alcoa Inc.	40	Qualcomm Inc.	16
Time Warner Inc.	84	UnitedHealth Group	62	Exxon Mobil Corp.	40	Walgreen Co.	16
US Bancorp	84	American Express Co.	60	Google Inc.	40	Lockheed Martin	14
National Oilwell Varco Inc.	78	Gilead Sciences Inc.	60	Medtronic Inc.	40	Freeport McMoRan Copper & Gold	12
Altria Group Inc.	76	Sara Lee Corp.	60	PepsiCo. Inc.	40	AT&T Inc.	8
Weyerhaeuser Co.	76	Baxter Intl Inc.	56	Coca-Cola Co.	36	Occidental Petroleum	8
		Dow Chemical	56	Heinz, H.J. Co	36	Amazon.com Inc.	0
		DuPont, E.I. de Nemours	56	NYSE Euronext	34	Baker Hughes Inc.	0
		Entergy Corp.	56	Boeing Co.	32	Berkshire Hathaway	0
		Goldman Sachs Group Inc.	56	Honeywell Intl. Inc.	32	Cisco Systems Inc.	
		McDonald's Corp.	56	Oracle Corp.	32	Costco Wholesale Corp.	0
		Texas Instruments Inc.	56	General Dynamics	30	CVS Caremark Corp.	0
		Verizon Communications Inc.	56	Bank of America Corp.	28	Devon Energy Corp.	0
		Williams Cos Inc.	56	FedEx Corp.	28	Halliburton Co.	0
		Regions Financial Corp.	52	Ford Motor Co.	28	Lowe's Cos Inc.	0
				Southern Co.	28	MasterCard Inc.	0
				Capitol One. Financial	26	NIKE Inc.	0
						Sprint Nextel Corp.	0
						Wal-Mart Stores	0
						Walt Disney Co.	0

Endnotes

¹ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

² Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities [File No. 4-637], The Securities and Exchange Commission, <http://1.usa.gov/yP3hjt>. E-mail provided by Coalition for Accountability in Political Spending lists the following pension funds managing \$902.38 billion: California Public Employees Retirement System (CalPERS); California State Teachers Retirement System (CalSTRS); New York State Common Retirement Fund; New York City Employee Retirement; New York State Teachers Retirement System; Department of State Treasurer NC Retirement Systems; Pennsylvania Public School Employees' Retirement System (PSERS); State Universities Retirement System; Illinois State Board - State Universities Annuitants Association; Los Angeles Fire and Police Pensions (LAFPP); Los Angeles City Employees Retirement System (LACERS).

³ The means to the ends would differ. DISCLOSE would require the recipients of money spent for electioneering purposes to reveal their donors while the Shareholder Protection Act would require donor corporations to disclose the groups to which they contributed. But the results would be similar: the public would learn which corporations spent money to influence elections, and how much.

⁴ Petition for Rulemaking from Committee on Disclosure of Corporate Political Spending to Elizabeth M. Murphy (Aug. 3, 2011), <http://1.usa.gov/yP3hjt>.

⁵ Comments on Rulemaking Petition: Petition to require public companies to disclose to shareholders the use of corporate resources for political activities [File No. 4-637], The Securities and Exchange Commission, <http://1.usa.gov/yP3hjt>. Total comments as of this writing stands at 260,288, the previous record number of comments according to a conversation with the SEC Press Office is 149,522. Comments on Proposed Rule:

Disclosure of Payments by Resource Extraction Issuers [Release No. 34-63549; File No. S7-42-10], The Securities and Exchange Commission (May 7, 2012 1:57PM), <http://1.usa.gov/xsiV5k>.

⁶ Speech of SEC Commissioner Luis A. Aguilar, Shining a Light on Expenditures of Shareholder Money, Feb. 24, 2012, <http://1.usa.gov/yGhtKI>.

⁷ Harvard Law School Forum on Corporate Governance and Financial Regulation, Corporations and Spending: A New Lobbying Focus in the 2012 Proxy Season, <http://hvrld.me/HAGbZg>.

⁸ Center for Responsive Politics, Commercial Banking, <http://bit.ly/xJCiav>.

⁹ MN Forward, disclosure to Minnesota Campaign Finance and Public Disclosure Board, <http://bit.ly/AlGjr7>.

¹⁰ Patrick Caldwell, 3M Among Corporations Giving to Pro-Emmer Group MN Forward, THE MINNESOTA INDEPENDENT (Sept. 22, 2010).

¹¹ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 916 (2010). Although elements of Kennedy's phraseology (e.g., "effective disclosure has not existed before today" ... "disclosure of expenditures can provide shareholders with the information needed" ... "shareholders can determine whether their corporation's political speech advances the corporation's interest" did not technically assert that mechanisms to compel disclosure actually existed at the time of the decision, the clear implication of his words was that such systems were in place.

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¹⁴ Shareholder Protection Act of 2011, H.R. 2517, 112th Cong. (2011).

¹⁵ *Id.*

¹⁶ Petition for Rulemaking from Committee on Disclosure of Corporate Political Spending to Elizabeth M. Murphy (Aug. 3, 2011),

<http://1.usa.gov/yP3hjt>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Luis A. Aguilar, SEC Commissioner, Address to the Practicing Law Institute (Feb. 24, 2012), <http://1.usa.gov/yGhtKI>.

²⁰ Press Release, Iowa Sen. Jeff Danielson, Iowa Senate: Iowa Senate Passes First-in-the-Nation Reforms To Protect Elections From Unfettered Corporate Spending (March 2, 2010).

²¹ The Iowa State Legislature, Senate File 2354 – Enrolled (April 2010).

²² Md. Election Law Code Ann. § 13-307.

²³ Ciara Torres-Spelliscy & Kathy Fogel, Shareholder-Authorized Corporate Political Spending in the United Kingdom, 46 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 479, 508 (2012).

²⁴ *Id.*

²⁵ CIARA TORRES-SPELLISCY, BRENNAN CENTER FOR JUSTICE, CORPORATE CAMPAIGN SPENDING: GIVING SHAREHOLDERS A VOICE 17 (2010).

²⁶ Ciara Torres-Spelliscy And Kathy Fogel, Shareholder-Authorized Corporate Political Spending in the United Kingdom 46 UNIVERSITY OF SAN FRANCISCO LAW REVIEW 479, 481 (2012).

²⁷ *Id.*

²⁸ Press Release, Center for Political Accountability, Political Disclosure Hits 100 Companies (March 21, 2012), <http://bit.ly/I8qB4o>.

²⁹ See Web site of Coalition for Accountability in Political Spending, <http://bit.ly/zJiNs4>.

³⁰ Press Release, Coalition for Accountability in Political Spending, NYS Comptroller DiNapoli, Founding CAPS Member, Gains Political Spending Commitments from Three Publicly Traded Corporations (Feb. 23, 2012), <http://bit.ly/IZbPgE>.

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³³ Aetna, Aetna Facts, <http://bit.ly/HOA7dF>. Information was accessed on April 12, 2012.

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³⁵ Aetna, Political Contributions and Related

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³⁷ *Id.*

³⁸ Press Release, Committee for Economic Development, Business Leaders Caution Against Transfer of Corporate Resources From Job Creation and Innovation to Campaign Spending (Sept. 26, 2011).

³⁹ THE CONFERENCE BOARD, HANDBOOK ON CORPORATE POLITICAL ACTIVITY: EMERGING CORPORATE GOVERNANCE ISSUES (2010), <http://bit.ly/Q66pW4>.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Press Release, Committee for Economic Development, New Business Poll Shows Discontent with Undisclosed Campaign Expenditures Following *Citizens United* Decision (Oct. 28, 2010).

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⁴⁵ *Id.*

⁴⁶ *Citizens United v. Federal Election Commission*, 130 S. Ct. 876 (2010).

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