Fulfilling Kennedy's Promise:

Why the SEC Should Mandate Disclosure of Corporate Political Activity

September 2011

Harvard Law School

PUBLIC CITIZEN Celebrating 40 Years of Progress

Acknowledgments
This report was written by John Coates, Professor of Law and Economics at Harvard Law School, and Taylor Lincoln, Research Director of Public Citizen's Congress Watch division.

About Harvard Law School
Harvard Law School is the oldest continuously operated law school in the United States, with approximately 1,900 students from more than 70 countries around the world. Its faculty includes more than 100 full-time professors and more than 150 visiting professors, lecturers on law, and instructors, with a range and depth of expertise, in all fields of legal scholarship and practice. Its faculty are leaders in their fields, setting the debates in legal theory and policy; opening up new lines of inquiry; and working out solutions to real-world problems.

About Public Citizen
Public Citizen is a national non-profit organization with more than 225,000 members and supporters. We represent consumer interests through lobbying, litigation, administrative advocacy, research, and public education on a broad range of issues including consumer rights in the marketplace, product safety, financial regulation, safe and affordable health care, campaign finance reform and government ethics, fair trade, climate change, and corporate and government accountability.

The Supreme Court's decision in *Citizens United v. FEC* to permit corporations to spend unlimited sums to influence federal elections was based in large part on the rationale that corporations would disclose their political expenditures and that shareholders would police the wisdom of such spending.

But no effective disclosure requirement was in place at the time of the decision, and subsequent efforts to close the gap through legislation have been rebuffed. Meanwhile, to the extent that shareholders might even learn of their corporation's political spending, the law currently gives them only limited ability to compel changes.

Now, the best chance to fulfill the Supreme Court's promises of disclosure and shareholder participation might rest with the Securities and Exchange Commission (SEC). The SEC could require full disclosure of corporate political spending by publicly traded companies, and could facilitate action by shareholders to sign off on such spending.

The twist, we suggest, is that such an action by the SEC might prove to be a favor to the owners of the affected corporations. Despite reflexive opposition to compulsory disclosure of political spending from many self-appointed advocates of the business community, preliminary data suggest that such a requirement might benefit corporate valuations or, at the least, pose no threat of a detrimental effect.

A. Background: The Rise and Fall of Political Disclosure from 2000 to 2010

For decades, conservatives who opposed most forms of campaign-finance regulation argued for a system of unlimited spending with full disclosure. For example, as controversy swirled over the national political parties' use of unregulated "soft money" during the 1990s, conservative columnist George Will proposed boiling down campaign finance regulation to just "seven words: no cash, full disclosure, no foreign money."[1]

Similarly, the *Wall Street Journal* opined in 2000: "Our view is that the Constitution allows consenting adults to give as much as they want to whomever they want, subject to disclosure on the Internet."[2]

[1] George Will, "Let's Play 20 Questions," *Newsweek*, March 15, 1999.

[2] "McCain's Future," *Wall Street Journal* editorial, March 10, 2000. As quoted in Norman Ornstein, "Full Disclosure: The Dramatic Turn Away from Campaign Transparency," *The New Republic*, May 7, 2011.

Congress in 2002 passed the Bipartisan Campaign Reform Act (BCRA), commonly known as McCain-Feingold. The law prohibited "soft money" contributions to the national political parties (*e.g.*, contributions from corporations and unions, and those exceeding contribution limits), and it prohibited outside groups (groups that aren't candidate or party committees) from using corporate or union money to pay for broadcast ads that mentioned a candidate in the run-up to a federal election.[3] This "electioneering communications" provision was meant to stop evasions of the soft money ban. To ensure compliance, the law required independent organizations to disclose, within 24 hours, not only the costs of these "electioneering communications," but also their funding sources. In 2003, in *McConnell v. FEC*, the Supreme Court by a 5-4 vote upheld nearly all parts of BCRA, including the electioneering communications provision.[4]

In a challenge to the restrictions on electioneering communications, a nonprofit group called Wisconsin Right To Life Inc. in 2004 sought to broadcast corporate-financed advertisements during the 60-day window that would ask viewers to call Sen. Russ Feingold (D-Wis.) and urge him not to filibuster judicial nominations. In 2007, in a major reversal of *McConnell*, the Supreme Court handed Wisconsin Right to Life a 5-4 victory.[5] The Court ruled that any ad that could "reasonably be interpreted as something other than an appeal to vote for or against a specific candidate" must be viewed as an "issue" ad rather than an election-related ad, and therefore could not constitutionally be prohibited in the run-up to an election even if funded with corporate money.[6]

In the wake of *Wisconsin Right to Life*, ads depicting candidates in the 30- and 60-day windows were still subject to disclosure requirements. But the FEC soon watered those requirements down. The FEC issued rules that required groups making electioneering communications to continue disclosing the amount of an expenditure, but that only required them to reveal the sources of money financing the communications in instances in

[3] The law banned corporate- or union-funded "electioneering communications," which it defined as ads broadcast in the 30 days before a primary or the 60 days before a general election that mentioned or otherwise depicted a candidate and were targeted at the candidate's voters but stopped short of urging the audience to vote for or vote against a candidate. Ads that did urge the audience to vote a certain way were plainly deemed as "express advocacy," for which contribution limits, a ban on the use of money from corporate or union treasuries, and other requirements pertaining to federally regulated electioneering expenditures applied.

[4] *McConnell v. Federal Election Commission*, 540 U.S. (2003).

[5] *Federal Election Commission v. Wisconsin Right to Life Inc.*, 551 U.S. 449 (2007).

[6] *Ibid.*

which a donor earmarked a contribution to be used for an ad. Such earmarking is rare in practice.[7]

In January 2010, in *Citizens United v. FEC*, the Supreme Court went even further, holding that corporations[8] could spend unlimited funds from their treasuries to pay for campaign ads. The decision overturned at least 60 years of established law prohibiting corporations from making independent expenditures to influence federal elections.[9] Justice Anthony Kennedy, the decision's author, justified permitting corporate electioneering in large part on the expectation that the funders of the ads would be disclosed.

"A campaign finance system that pairs corporate independent expenditures with effective disclosure has not existed before today," Kennedy wrote in *Citizens United*.[10] "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." Furthermore, Kennedy asserted, "Shareholders can determine whether their corporation's political speech advances the corporation's interest in making profits,

[7] See 11 C.F.R. § 104.20(c)(9). The Federal Election Commission (FEC) ruled that groups were only required to disclose the funders of electioneering communications in cases in which they received contributions specifically earmarked for electioneering purposes. Because very few donors to political groups earmark their contributions for a specific campaign ad, this rule opened the door for trade associations and other outside groups to run ads without disclosing their funders.

[8] *Citizens United v. Federal Election Commission*, 558 U.S. (2010). The Court also purported to free up unions to spend unlimited funds from their treasuries to pay for campaign ads, but unions are subject to restrictions beyond those at issue in *Citizens United*, which effectively give workers represented by unions an individual "opt out" from such expenditures. Those restrictions remain in force, although they may come under attack in the wake of *Citizens United*. See Benjamin Sachs, From Employees to Shareholders: Political Opt-Out Rights after *Citizens United*, Working Paper, August 2011.

[9] Direct corporate contributions in federal elections had been banned since the Tillman Act (1907). The Tillman Act was eventually subsumed under the Federal Corrupt Practices Act of 1925. In 1943, Congress temporarily extended the ban on corporate contributions to labor unions as well under the War Labor Disputes Act. Large labor unions had evolved through the New Deal as another vehicle capable of amassing large sums of money that could be used for political purposes. In the 1944 elections, labor unions responded to the War Labor Disputes Act by diverting that money to independent expenditures (rather than contributions) on behalf of their favored candidates. To close this loophole, Congress enacted the Taft-Hartley Act of 1947 to clarify that both campaign contributions and expenditures by corporations and unions were prohibited by law. The legislative history indicates that some members of Congress believed both contributions and expenditures had already been prohibited by the Tillman and Federal Corrupt Practices Acts. The Federal Election Campaign Act of 1971 (FECA), as subsequently amended, incorporated the Taft-Hartley Act's long-standing provision against corporate and union campaign contributions and expenditures, which was reconfirmed once again by Congress in BCRA.

[10] *Citizens United v. Federal Election Commission*, 558 U.S. (2010).

and citizens can see whether elected officials are in the pocket of so-called moneyed interests."[11]

But, as noted above, by the time *Citizens United* was issued, comprehensive disclosure rules had already been nixed by the FEC in the wake of the *Wisconsin Right to Life* decision. Kennedy may have assumed that corporations would broadcast ads in their own name, *e.g.*, "Coca-Cola endorses Smith." But in reality the vast majority of third-party electioneering advertisements have historically been broadcast by third party entities – such as trade associations and ad hoc front groups – that collect money from other sources and generally keep their funders secret. In short, *Citizens United* presumed the existence of disclosure rules that do not exist.

B. The Aftermath of Citizens United: Undisclosed Electioneering Spending and Unsuccessful Attempts to Close the Gap

The sources of about half the money spent in the first post-*Citizens United* election cycle were kept secret. Of $266.4 million spent by outside groups to influence the 2010 elections, $135.6 million was spent by groups that did not reveal any details about their funders.[12] In 2010, the undisclosed portion of independent spending alone was almost *double* the $68.9 grand total of spending by outside groups in 2006, the previous mid-term election cycle.[13] Non-disclosing groups included the U.S. Chamber of Commerce, which was the top spender, at over $31 million. Other top spenders identified themselves only as "Americans for Job Security," the "American Action Network" or the "American Future Fund."[14]

Efforts before and after the 2010 elections have sought to close the disclosure gap, but each met with vigorous opposition, mostly along party lines. The DISCLOSE Act would require organizations to reveal the identity of any donor behind a campaign ad giving $1,000 or more. The measure passed the then-Democratic House of Representatives but in September 2010 fell one short of the 60 votes needed to overcome a Republican filibuster in the Senate.

---

[11] *Ibid.* Note: 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" [emphasis added] .... "shareholders *can* determine whether their corporation's political speech advances the corporation's interest" [emphasis added]) did not technically assert that mechanisms to compel disclosure actually existed at the time of the decision, the implication of his words was that such systems were in place.
[12] "Disclosure Eclipse: Nearly Half of Outside Groups Kept Donors Secret in 2010; Top 10 Groups Revealed Sources of Only One in Four Dollars Spent," Public Citizen, Nov. 18, 2010.
[13] *Ibid.*
[14] *Ibid.*

The Shareholder Protection Act would require companies to obtain shareholder approval of their political budgets and to disclose the details of their political spending. The bill was approved by the House Financial Services Committee in 2010, but the congressional session ended before the full House had considered it. It was reintroduced in July 2011.

Meanwhile, President Obama has contemplated issuing an executive order that would require government contractors to disclose the money they spend to influence elections. But the draft executive order has been attacked by the U.S. Chamber of Commerce and other business groups and to date has not been issued.[15]

Conservatives and GOP leaders, having received in *Citizens United* what they long sought (unlimited corporate spending on elections), appear to have lost their appetite for disclosure. They have roundly attacked each of the proposals to fill the disclosure gap – effectively repudiating Justice Kennedy's promise of disclosure in *Citizens United*.

Some of the criticism of reform proposals has been substantive. Many congressional Republicans argued that the DISCLOSE Act would have imposed more onerous requirements on corporations than unions and that it would have gone beyond the core mission of ensuring disclosure.[16] The corporations versus unions claims were specious. Corporations and corporate-backed trade groups would have needed to disclose more than unions only because they typically receive a larger portion of their funding from donors giving more than $1,000. Both corporations and unions would have been able to keep the identities of contributors giving less than $1,000 confidential. The second complaint was more accurate: in addition to requiring disclosure, the bill would have prohibited government contractors and foreign entities from making expenditures to influence federal elections. But DISCLOSE Act opponents did not offer alternative bills that would have closed the transparency gap while addressing their concerns.

In an editorial published on Election Day 2010 the *Wall Street Journal* celebrated the post-*Citizens United* era with an editorial titled "Campaign-Finance Reform, RIP: This Year's Gusher of Spending Has Made Far More Races Competitive." Then the *Journal* began to back

[15] See, *e.g.*, "Coalition Letter to President Obama on the Draft Executive Order," May 16, 2011, available at http://www.uschamber.com/issues/letters/2011/coalition-letter-president-obama-draft-executive-order.
[16] See, *e.g.*, George F. Will, "Let Us Disclose That Free-Speech Limits Are Harmful," *Washington Post*, July 11, 2010.

away from its prior pro-transparency stance. "These columns have long supported disclosing political contributions as part of a larger deregulation that allowed any American to give as much as he wants to any candidate," the paper wrote.[17] "Lately, however, as we've watched Democrats and liberals attack Target Corp. and other businesses for donating to independent groups, we wonder if even disclosure is wise."

But in exchange for "a wholesale repeal of all campaign-finance limits and putting the Federal Election Commission out of business," the *Journal* allowed, "we're willing to compromise."[18]

C. Research Shows That Greater Political Activity By Corporations Is Strongly Associated with Lower Shareholder Value

During all of these legal and political developments, a common assumption by many participants in the debates over corporate political activity – including participants on both sides of the issues – has been that regardless of whether such activity is good for the country, it is certainly good for the shareholders of the active corporations. Why else would corporations want to get involved in politics? Counter to those widespread perceptions, however, research in several past and ongoing studies suggests that companies seeking an advantage through lobbying and campaign activities may not be doing their shareholders any favors. Rather, corporate political activity overall may reflect the interests of the managers of the companies, or on a risk-adjusted basis may be less beneficial than other purposes to which shareholder funds could be put.

One of the authors of this paper (Coates) has found that, both before and after *Citizens United*, corporate political activity was associated with lower corporate value. Specifically, among the S&P 500 – which accounts for 75 percent of the market capitalization of publicly traded companies in the U.S. – firms active in politics, whether through company-controlled political action committees, registered lobbying, or both, had lower price/book ratios than industry peers that were not politically active. This was true in every election cycle from 1998 to 2004.[19] It became even more pronounced after the *Citizens United* decision, in the 2010 elections, when politically active firms had, on average, a 24 percent lower

[17] "Campaign-Finance Reform, RIP: This Year's Gusher of Spending Has Made Far More Races Competitive," *Wall Street Journal*, Nov. 2, 2011.
[18] *Ibid.*
[19] John C. Coates IV, "Corporate Governance and Corporate Political Activity: What Effect Will Citizens United Have on Shareholder Wealth?" Harvard Law and Economics Discussion Paper No. 684, 2010. Available at http://ssrn.com/abstract=1680861.

price/book ratio than their industry peers.[20] This difference can be found before and after controlling for other factors that have previously been found to affect firm value, including recent profits, sales growth, leverage, and size. In addition, while political activity generally correlates negatively with general measures of shareholder rights and power, it continues to be associated with lower shareholder value even after controlling for shareholder rights of a general nature. That is, even among companies with poor shareholder rights, firms that are more politically active tend to have lower valuations than less active firms.

In an unrelated study, Rajesh Aggarwal and co-authors[21] found that companies that made soft money donations to parties or donations to Section 527 committees from 1991 to 2004 (accounting for roughly 11 percent of the universe of U.S. publicly traded firms) tended to be large, slowly growing firms that had more free cash than other firms but spent less on research and development or business investments. Their donations were negatively correlated with long-term firm-specific stock market performance. Aggarwal *et al.* also found that better corporate governance – including better board structure, lower CEO compensation, and the presence of large shareholders to monitor corporate behavior – tended to be associated with less political activity. But, as with Coates's research, the negative relationship between political activity and shareholder returns persisted even after controlling for more general corporate governance factors, suggesting that policies limiting or disclosing political activity could further improve shareholder value.

Many academic studies have found that political activity (particularly lobbying) can produce tangible policy benefits for corporations, ranging from tax subsidies to changes in trade policy. One recent study (Cooper and others),[22] for example, found that companies sponsoring PACs making donations to more candidates in the period of 1979 to 2004 had on average higher stock returns than industry peers in the following year, although companies with PACs that simply made larger donations did not generate such excess returns.

The methods for measuring companies' valuations and levels political activity are sufficiently varied that it is not surprising that different researchers would arrive at

[20] John C. Coates IV, "Corporate Political Activity, Corporate Governance and Corporate Value Before and After *Citizens United*." Working paper.
[21] Rajesh K. Aggarwal, Felix Meshke, and Tracy Wang, "Corporate Political Donations: Investment or Agency?" Working Paper, January 2011. Available at http://ssrn.com/abstract=972670.
[22] Cooper, Michael J., Huseyin Gulen, and Alexei V. Ovtchinnikov, "Corporate Political Contributions and Stock Returns," *Journal of Finance*, 2010 (65: 687-724).

different conclusions on the benefits or harms of companies choosing to enter the political arena. Cooper *et al.*, for instance, chose to focus on stock returns. We believe that price/book ratios provide a better insight into the market's view of a company's value.

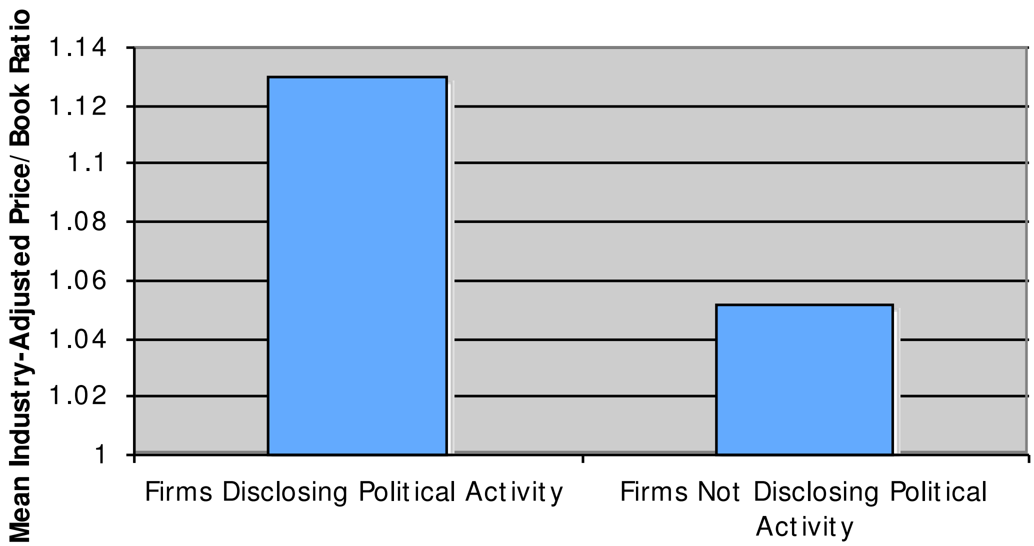
But even if, on balance, one determined that the body of research shows that political activities do slightly benefit companies, we would argue that such activities nonetheless fail to benefit most investors most of the time. Institutional investors hold more than 75 percent of the equity in the 1,000 largest publicly traded companies in the United States. The individuals holding shares in institutional funds have diversified holdings. To the extent that corporate political activity is at best a zero-sum game, even investors who may realize small advantages from their holdings in one company would be as likely as not see their gain cancelled out elsewhere.

D. Politically Active Companies That Voluntarily Disclose Their Activities Experience Higher Valuations Than Similarly Active Companies That Do Not

What about disclosure? Is it true that companies that disclose their political activities are worse off for doing so? To answer this question, we analyzed the market valuations and other financial aspects of 80 S&P 500 companies that have adopted policies calling for disclosure of their electioneering activities.[23] In particular, we compared the price/book ratios of those companies with similarly sized S&P 500 companies in the same industries. (Price/book ratios are commonly used valuation metrics that are more stable than year-to-year earnings. Price/book ratios reflect the market's evaluation of whether a company as currently managed is using shareholder resources well, compared to similar firms.) Because many factors influence price/book ratios, we controlled for company size, leverage, research-and-development activities, and three-year sales growth, as well as whether the companies had PACs that made donations in 2010. The final variable, whether companies had active PACs, is necessary because companies without active PACs do not tend to have political disclosure policies. As discussed in Section C, above, companies that are politically inactive tend to have higher price/book valuations than companies that are politically active. Therefore a non-disclosing politically inactive firm could be expected to have a higher valuation than a disclosing politically active firm. Our inquiry seeks to compare the performance of politically active firms that disclose their activity with that of politically active firms that do not disclose.

[23] About 85 companies have adopted some variation of a policy provided by the Center for Political Accountability in which they have pledged to disclose electioneering activities. Available at http://www.politicalaccountability.net/index.php?ht=d/sp/i/869/pid/869.

We found that companies with policies calling for political disclosure had a 7.5 percent higher industry-adjusted price/book ratio than other firms as of year-end 2010. This difference is statistically significant at conventional (95 percent) levels – meaning that it is only 5 percent likely that our results are due to random fluctuations in our data, assuming we have included appropriate control variables.[24] Figure 1 depicts our findings:



Given data limitations, we cannot claim that disclosure policies *cause* the higher price/book ratios. We only claim that they these policies are correlated in the S&P 500, and the companies that have adopted pro-disclosure policies are, on the whole, more valuable. Moreover, since we cannot observe some political activities (*e.g.*, undisclosed donations to trade groups), we cannot be sure we have controlled for all politically active in the S&P 500 in our regressions. Nevertheless, the data from 2010 are inconsistent with the idea that disclosure policies harm politically active companies as a general matter, and they are consistent with the idea that well-managed companies responsive to shareholder concerns tend to be more highly valued than other companies.

[24] In this analysis, we used the existence of active PACs as the barometer for whether a firm was politically active because this report concerns the proposal for disclosure of political activity in an electioneering context. The Coates studies cited above used the existence of PACs *or* federal lobbying activity as the barometer. The core finding of this section, that disclosing firms experience higher valuations than non-disclosing firms, holds if PACs and/or lobbying activity are used to control for political activity, but the correlations are weaker than those for active PACs alone.

E. The Securities and Exchange Commission Should Give Shareholders the Right to Sign off on Political Budgets; Require Publicly Traded Companies to Disclosure Their Political Expenditures

The voluntary disclosures that provided the basis for our analysis are encouraging. They show that forward-thinking directors and managers of large and successful businesses share the view that shareholders, no less than the public, deserve to know how their funds are being spent in the political arena. These voluntary disclosures, however, are not a complete policy solution. Voluntarily adopted disclosure policies are often inconsistent, making comparisons difficult or impossible; are sometimes incomplete, making it hard to track the full range of a company's complementary political activities; and generally lack reliable enforcement mechanisms to ensure compliance. For the typical diversified shareholder, moreover, the important question is whether corporate political activity overall is valuable, so voluntary disclosure by a small fraction of public companies will never provide meaningful information.

Congress should adopt laws giving shareholders the right to sign off on corporate political spending budgets and mandating board approval of such budgets and activities, similar to laws that have been adopted in the United Kingdom. But in the current U.S. political climate, congressional action may not be forthcoming. The Securities and Exchange Commission can and should fill this void by adopting mandatory disclosure requirements for corporate political activity.

In *Citizens United*, the Court assumed that shareholders would oversee corporate political spending. The Court's assumptions were off base in at least two key ways:

- First, because no comprehensive requirement for disclosure exists (and Congress has not implemented one), ordinary shareholders have no more prospect than members of the general public of learning about their corporation's political activities. This is especially significant because most corporate-funded political activities are carried out by trade associations or front groups that keep their donors secret. Such third party groups were the largest sponsors of political ads in 2010.[25]

[25] Michael M. Franz, "The Citizens United Election? Or Same as it Ever Was?" The Forum, Vol. 8, Issue 4, 2010, Table 1.

- Second, even if shareholders are fully apprised of their corporation's political spending, they lack the power to do anything about it besides passing non-binding resolutions. The Shareholder Protection Act introduced last year and again this year by Rep. Michael E. Capuano (D-Mass.) and Sens. Robert Menendez (D-N.J.) and Richard Blumenthal (D-Conn.) would give shareholders the power to approve corporations' political budgets and mandate detailed disclosure of corporate political expenditures, but the bills face an uphill battle in Congress.

The Securities and Exchange Commission should issue rules that ensure comprehensive disclosure of political activities by publicly traded companies and facilitate shareholder efforts to adopt bylaws requiring that managers get their sign-off on political budgets.

- On disclosure. The SEC should require publicly traded companies to disclose to shareholders and the public their expenditures used for political purposes, including donations to trade associations that help finance electioneering and/or lobbying activities. The SEC rule should require companies to obtain from their trade associations an enumeration of the amount of their contributions used for non-deductible political activities (defined broadly as lobbying and electioneering) as well as details on the amount of money used specifically for electioneering. Electioneering expenditures could be calculated relatively simply by taking the amount the third party group spent on activities recognized by federal election law, such as on "independent expenditures" and "electioneering communications."

  Distinguishing between electioneering and lobbying spending is important because electioneering activities are most likely to alter the national political landscape. Electioneering spending is also most apt to breed corruption, which can run in both directions – politicians can corrupt corporate officials as much as the reverse. The Supreme Court carved out a special place for the regulation of electioneering spending in the wake of the Watergate scandal, and the single aspect of *Citizens United* that buoyed traditional campaign finance law was the Court's endorsement of disclosure.

- On shareholder sign-off. The rules should stipulate that shareholders have the right to use the company's proxy statement to propose and (if approved by a majority of shareholders) to adopt by-laws requiring that any publicly traded company's political spending budget – including electioneering and lobbying expenditures – be approved by a majority vote of all shareholders in advance of any political spending.

Such a requirement would be similar to that adopted in the United Kingdom in a series of amendments to its Companies Act in 2000 and 2006. Research suggests that the UK's laws have not prevented corporate political activity, but have modified corporate behavior, reducing political expenditures at a number of companies, and limiting such expenditures by publicly held companies relative to privately held firms,[26] which are not funded with "other people's money."[27]

F. Conclusion

Isolating the effects of better disclosure on companies' valuations is challenging for many reasons, including the enormous array of other factors that influence valuations and – somewhat paradoxically – the lack of full disclosure by the vast majority of large publicly traded companies. But the arguments for requiring comprehensive disclosure are sound. First, the limited available data show that better disclosure does not reduce shareholder value, and instead appears to run together with better valuations among comparable large public companies. Second, shareholders of publicly traded companies have a right, at a minimum, to know how the companies in which they are invested are attempting to influence public policy.

Efforts to encourage voluntary disclosure by large companies are admirable and deserve credit for publicizing the issue. But long-term benefits of voluntary disclosure regimes are limited. A compulsory system is needed. There are many arguments for why both the public and shareholders have grounds to demand disclosure, but perhaps none is so compelling as the language in the Supreme Court decision that unleashed the torrent of undisclosed spending in the 2010 elections that will no doubt accelerate in 2012.

Justice Kennedy's opinion in *Citizens United* attempted to point the way towards a grand compromise, albeit on the terms laid out by opponents of campaign-finance regulation. Corporations would be allowed to spend unlimited sums to influence federal elections. In exchange, the public (and shareholders) would be able to monitor the corporate electioneering activity that the decision allowed. Only half of this promise has been fulfilled. It's up to the Securities and Exchange Commission to make good on the other half.

[26] See Ciara Torres-Spelliscy and Kathy Fogel, "Shareholder-Authorized Corporate Political Spending in the U.K.," Working Paper, May 24, 2011. Available at http://ssrn.com/abstract=1853706.
[27] Louis Brandeis, "Other People's Money – And How the Bankers Use It," 1914.