GLASS LEWIS

Corporate Political Donations

In-Depth Report

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Introduction

Glass Lewis believes that a thoughtful disclosure and oversight policy regarding a company's political contributions, developed and overseen by the board, is an important component of corporate accountability. In our view, a rigorous oversight process can minimize a company's exposure to legal, reputational, and financial risk by ensuring that donations are made in accordance with federal and state law, and that these donations are consistent with both a company's stated values and its long-term interests. Indeed, "corporate boards have a fiduciary responsibility to manage risk and set policies that govern what companies are doing politically and ensuring that the company is not put at risk," according to the Center for Political Accountability.[1]

Since 2010, resolutions relating to corporate political spending have been one of the most common shareholder proposals voted on by shareholders at annual meetings in the United States. Many of these proposals, particularly those seeking reports on political contributions and expenditures, received record levels of shareholder support. Given the dynamic regulatory environment surrounding corporate political spending and the reputational implications of such spending, investors have remained attentive to disclosure of corporate political spending. However, according to an article from the World Economic Forum, "there is still no effective mechanism for investors, citizens, governments, and the media to monitor the full scope of and impact of corporate political activities, by disclosing exactly if, where, how much, and for what cause a company actually invests its influence."[2]

With the option to divert money to political causes, companies can choose to donate to candidates they believe will serve their business interests. A 2021 study found that companies spend in U.S. state politics when: (i) they are worried about negative media coverage prompting what they perceive to be potentially harmful regulation, (ii) there are powerful social movement organizations like environmental protection groups within a state, (iii) there is an opportunity to gain a seat at the legislative table to communicate their interests, and (iv) they see it as consistent with their responsibility to stakeholders.[3] Money, whatever the source, also plays a significant role in political campaigns as better-financed candidates can more easily spread their messages to voters and sway Election Day decisions. For example, in 2016, the highest spender won in 96% of House races and 88% of Senate races, an increase from 94% and 82% in 2014.[4]

Given the benefits that can accrue from making political contributions, a majority of large companies are engaging in political spending. Based on a political spending survey in 2010, nearly 60% of the largest U.S. companies spend shareholder money from the corporate treasury on political campaigns and 2/3 have political action committees ("PACs") that spend money contributed by executives. Less than one quarter of S&P 500 companies required board oversight of political spending, but just over half of the top 100 companies had board oversight. Further, more than 80% of S&P 500 companies in the survey did not provide information on what

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[1] Bill Snyder. "The Self-Destructive Downside to Corporate Political Spending." Stanford Graduate School of Business. February 2, 2021.
[2] Alberto Alemanno. "4 Ideas on How Businesses Can Be Responsible for Political Lobbying." World Economic Forum. February 2, 2022.
[3] Richard A. Devine, et al. "Corporate Spending in State Politics and Elections Can Affect Everything from Your Wallet to Your Health." *The Conversation.* October 22, 2022.
[4] Domenico Montanaro, Rachel Wellford, Simone Pathe. "Money is a Pretty Good Predictor of Who Will Win Elections." *PBS*. November 11, 2014.

they spend, with almost all companies reporting at the top end of the revenue scale.[5] However, according to the 2023 CPA-Zicklin Index of Corporate Political Disclosure and Accountability, 78% of S&P 500 companies disclosed full or partial information about their political spending or prohibited at least one type of spending.

In addition to contributions made directly from their treasuries or through PACs, corporations may pursue alternative means of political spending. Specifically, political organizations, many of which receive funding from corporations, have been empowered by the Supreme Court to spend more than ever before on elections and lobbying. The 2016 elections were the most expensive in U.S. history, with total spending just under $7 billion, exceeding previous election spending by more than $630 million. Spending in the presidential election alone totaled an estimated $2.65 billion.

The largest increase in spending came from outside groups (often funded with corporate contributions), which spent a total of $1.4 billion - 73% more than in 2012.[6] However, spending in 2020 blew 2016 out of the water. Federal spending in the 2020 election totaled an estimated $14 billion, with the presidential election spending alone accounting for approximately $6.6 billion. Not only did the 2020 figures represent more than double the spending in 2016 – they totaled more than the two previous presidential election cycles combined.

While small donors accounted for a larger share of fundraising compared to the 2016 election, outside ("independent") spending by super PACs, political parties, and "dark money" groups nearly doubled their spending in 2020 compared to the 2016 election cycle. Super PACs accounted for 63% of all outside spending, while spending by dark money groups declined to 4%. According to OpenSecrets, this does not indicate a decline in dark money but rather that these groups are funneling money to closely tied super PACs.

Given the dramatic increase in aggregate political spending and the variety of ways in which companies may assert their political voice, it's not surprising that investors are growing more concerned with how companies are ensuring that political donations and activities are aligned with maximizing long-term shareholder value. Many investors have realized that increased political activity brings greater risk. This realization has intensified as the avenues through which companies can spend corporate funds to influence elections and legislation have expanded, primarily because of the 2010 Citizens United Supreme Court case.

While corporations are currently restricted from donating to individual federal candidates, there are several other avenues by which they may engage in the political process, including: political action committees, organizations registered under 26 USC §527 of the Internal Revenue Code ("527 organizations"), 501(c)(4) organizations ("social welfare groups"), trade associations, direct corporate contributions, and through direct lobbying.

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[5] Heidi Welsh, Robin Young. "How Companies Influence Elections: Political Campaign Spending Patterns and Oversight at America's Largest Companies." Sustainable Investments Institute, IRRC Institute. (p.6). November 5, 2010.
[6] Ashley Balcerzak. "UPDATE: Federal Elections to Cost Just Under $7 Billion, CRP Forecasts." OpenSecrets. November 2, 2016.

Political Action Committees

Political action committees ("PACs") are private organizations typically established by corporations or trade associations that contribute more than $1,000 to influence an election. Corporate-sponsored PACs are generally only able to receive funding through voluntary employee or member contributions. Such multicandidate PACs are able to donate up to $5,000 to a single candidate and up to $15,000 to a political party per each election. In recent years, a new type of PAC has emerged, commonly referred to as a "super PAC."

A 2010 federal court ruling in *SpeechNow.org v. Federal Election Commission* effectively loosened restrictions regarding political spending and has allowed super PACs to raise unlimited amounts of money from any source, provided that the donors are disclosed and that funds are only spent on independent expenditures. Essentially, while super PACs are unable to donate directly to any candidate, they can raise unlimited sums from companies, unions, associations, and individuals and can spend unlimited sums to advocate for or against political candidates.

The emergence of super PACs has resulted in massive amounts of political spending. For example, during the 2010 election cycle, 83 groups organized as super PACs reported total independent expenditures of more than $62 million. This spending has grown at an exponential rate. During the 2012 election cycle, 1,275 super PACs reported total independent expenditures of almost $610 million, while ten years later, as of December 6, 2022, 2,422 super PACs reported spending over $1.3 billion out of $2.3 billion raised in total.

Leadership PACs

Another type of PAC that has received significant attention is the "leadership PAC." According to the FEC, these PACs are established as "nonconnected committees… [designed] to support candidates for various federal and nonfederal offices" and are "directly or indirectly established, financed, maintained or controlled by a candidate or an individual holding federal office," but are not an authorized committee of the candidate or office holder and are not affiliated with an authorized committee of a candidate or officeholder.

Individuals are permitted to donate up to $5,000 annually to a member's leadership PAC, contributions that can be made in addition to the maximum donation to the members' campaign committee. In addition, leadership PACs can contribute up to $5,000 per election to their sponsor's campaign committee, thus allowing both direct and indirect benefits to a politician who maintains such a PAC. According to OpenSecrets, a nonpartisan research group that tracks money in U.S. politics and its effect on elections and public policy, leadership PACs are designed for two things: "[t]o make money and to make friends." These PACs typically fund travel expenses, office expenses, consultants, polling, and other non-campaign expenses. Additionally, the funds may be used to fund other candidates' campaigns or to donate to other candidates because they are seeking a leadership position in Congress or a higher office.

Although leadership PACs are designed to fund campaign expenditures and expenditures associated with holding office, many argue that these PACs ostensibly act as personal expense accounts for politicians. According to Melanie Sloan, the former executive director of Citizens for Responsibility and Ethics in Washington, when individuals make contributions to politicians, "they are doing it because they are in sync with that member of Congress's views and they want to see them pushing policies and getting reelected... [they likely don't] have any idea that some of that money is going into the member's personal bank account." However, these donations appear to be doing just that. According to Trevor Potter, a former FEC chair, leadership PACs are now the second largest political revenue stream for members of Congress, and these members will use the funds from their leadership PACs "in retirement for everything that is vaguely a political expense. If they become a lobbyist, which about half of members who leave Congress do nowadays, that becomes their lobbying slush fund. So, it just keeps going, at least until death."[7]

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[7] Steve Kroft. "Washington's Open Secret: Profitable PACs." *60 Minutes*. October 21, 2013.

Trade Associations

Companies are often members of trade associations or trade groups, which frequently spend large amounts of money on political donations or lobbying as a means of corporate political action. For example, according to OpenSecrets, the U.S. Chamber of Commerce ("the Chamber") is one of the largest and most politically active trade associations. The Chamber's annual lobbying expenditures peaked at over $144 million in 2009 and have declined somewhat over time, with its most recent receipts totaling nearly $50 million as of Q3 2023.

Corporate donations to trade associations can have financial implications for shareholders. Under Section 162(e)(1) of the Internal Revenue Code ("IRC"), members of trade associations are not allowed to deduct the part of their dues or payments to these groups that are used for political means. While the IRC requires trade associations to provide member companies with estimates of what portion of their payments will be used for political purposes, trade associations are not required to provide a breakdown of the recipients of those expenditures.

Additionally, trade associations can pay a "proxy tax" at the highest rate imposed by the IRC in lieu of providing member companies with a breakdown of expenditures. Given current regulations, tracking trade associations' expenditures on political causes can often be nearly impossible, due, in part, to the fact that not all donations or membership dues are used for political purposes. This leaves corporations unable to determine which, if any, causes or campaigns their dues or donations support, which makes it difficult to assess the effects of donations on long-term shareholder value.

Such an assessment is difficult when companies do not provide transparency into their trade association payments. However, recent trends suggest that this type of disclosure is becoming more mainstream. For example, the Center for Political Accountability found that in 2023, 355 companies (70.8%) in the S&P 500 disclosed full or partial information about memberships in or payments to trade associations or instructed trade associations not to use company payments for election-related activity. This figure is up from 302 companies (61%) in 2022, 280 companies (56.8%) in 2021, 251 (51%) in 2020, 234 (47.2%) in 2019, 210 (43%) in 2018, and 207 (41%) in 2017.

Given the lack of adequate and accessible information, investors have engaged with companies to evaluate their roles in trade associations and to assess the risks and benefits of connections with and donations to these organizations. For example, in January 2011, a coalition of investment organizations representing approximately $43 billion in assets wrote letters to 35 major corporations that served on the board of the U.S. Chamber of Commerce requesting that the companies engage with the Chamber in order to address its policy on climate change legislation.[8] Further, a report released by several U.S. senators noted examples of companies such as Apple, Exelon, and PG&E that withdrew their Chamber membership due to the Chamber's position on climate change and concerns that companies' membership dues were being used for lobbying or political purposes contrary to their beliefs and values.

This type of engagement has grown as issues related to corporate payments to trade associations gain more attention from investors, particularly considering the potential risks associated with companies holding

[8] Michal Connor. "Investors Press Companies on U.S. Chamber Board Roles." *Business Ethics*. January 31, 2011.

leadership roles in trade associations that have controversial views or positions that contradict those publicly stated by their membership. For example, in August 2015, in the wake of the Obama Administration's announcement of its Clean Power Plan to combat climate change, 60 investors and investment organizations representing more than $320 billion in assets sent a letter asking companies to use their "leverage" with the Chamber "to encourage the organization to step back from its campaign against the … Clean Power Plan." This continued to be a topic of interest for some investors in 2019 when a group of at least 70 institutional and individual investors filed shareholder resolutions with 33 companies requesting that they increase indirect lobbying and trade association disclosure, down from the group of 74 investors filing with 50 companies in 2018.

Lobbying

Lobbying is becoming an increasingly popular form of corporate political activism. Companies, unions, and other organizations spend billions of dollars annually to lobby Congress and federal agencies, often at a far higher rate than their political contributions. For example, in the 2010 election cycle, corporate spending accounted for approximately 7% ($246 million) of federal campaign expenditures and at least 68% ($5.18 billion) of federal lobbying expenditures. This phenomenon was mirrored by the U.S. Chamber of Commerce, which, during the same election cycle, spent $33 million on PAC contributions and independent expenditures, and $302 million on lobbying. Given this spending, it is unsurprising that lobbying has been found to be the primary means through which corporations influence policy in their favor.[9] According to OpenSecrets, which had previously reported that 2010 was an all-time peak in lobbying,[10] total federal lobbying spending reached a nominal record of over $4.1 billion in 2022, "the highest lobbying spending since 2010 when adjusted for inflation."[11]

Unlike corporate political contributions, however, companies are required to report and make publicly available information regarding their lobbying activities. Under the Lobbying Disclosure Act of 1995, companies that hire lobbyists must file Lobbying Disclosure Act ("LDA") reports which provide good-faith estimates, rounded to the nearest $10,000, of all lobbying-related expenditures in a quarter. Organizations that spend less than $12,500 lobbying in a quarter are exempt from such disclosure.[12]

The LDA disclosure requirements only cover direct lobbying activities, defined as those in which companies engage the services of professional lobbyists to influence legislation. They do not require disclosure of information regarding activities constituting indirect lobbying, also known as grassroots lobbying. Grassroots lobbying, which has become increasingly popular in the last several years, generally refers to attempts to influence public opinion and encourage action with respect to relevant legislation. Rather than being undertaken by professional lobbyists, this type of lobbying is typically undertaken by advocacy groups and social welfare organizations.

[9] Adam Bonica. "Avenues of Influence: On the Political Expenditures of Corporations and Their Directors and Executives." Stanford University Department of Political Science. September 15, 2015.
[10] Karl Evers-Hillstrom. "Lobbying Spending Reaches $3.4 Billion in 2018, Highest in 8 Years." OpenSecrets. January 25, 2019.
[11] Taylor Giorno. "Federal Lobbying Spending Reaches $4.1 Billion in 2022 — The Highest Since 2010." OpenSecrets. January 26, 2023.
[12] 2 U.S.C. § 1601; *See also* "Lobbying: Methodology." OpenSecrets.

Advocacy Groups

527 Organizations and Social Welfare Organizations

Advocacy groups, particularly 527 organizations, are another mechanism by which political funds are disseminated. These tax-exempt organizations are typically parties, candidates, committees, or associations organized to influence an issue, policy, appointment, or election at the federal, state, or local level. 527 organizations are able to raise an unlimited amount of funds from individuals, corporations, or labor unions and must register with the IRS and disclose their contributions and expenditures unless: (i) it is a committee required to file with the FEC, (ii) it is a state or local candidate or party committee, or (iii) it is an organization that anticipates gross annual receipts of less than $25,000. All political committees that register and file reports with the FEC are 527 organizations, but not all 527s are federally registered political committees.[13] Since 2010, corporations have been the predominant contributors to the enormous growth in 527 organizations.[14]

Another type of advocacy group is the 501(c)(4) organization, also called a social welfare organization. These groups may engage in political activities as long as that is not their primary purpose, meaning that they do not spend more than 49% of their money directly attacking or promoting candidates for office.[15] While regulation of these entities has historically been fairly lax,[16] 2015 legislation requires that newly-formed and some pre-existing 501(c)(4)s must file a notice with the IRS.[17]

While both 501(c)(4) and 527 organizations can raise unlimited amounts of funds and are tax-exempt, a distinguishing difference is that, unlike 527 organizations, 501(c)(4) organizations are not generally required to disclose their donors. However, certain activities may trigger the organizations to provide additional disclosure, including donor identity and contribution amount. Thus, social welfare organizations play an increasingly important role in elections because they allow individuals and corporations to make unlimited anonymous donations to issues, causes, or, in essence, politicians. For example, spending by such organizations in the 2012 election cycle amounted to over $257 million. Although total spending decreased to just under $25 million in 2022, it still represents a significant source of political spending by outside groups. Moreover, the number of these organizations is growing rapidly. In fiscal 2010, the IRS received 1,741 applications from social welfare organizations requesting tax-exempt status; two years later, that figure grew to 2,774,[18] which was then followed by an increase of almost 60% to 4,417 in 2014. This means that there are an increasing number of organizations with limited disclosure requirements potentially entering the political sphere, creating more risks for investors concerned about companies' political activities.

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[13] 26 U.S.C. § 527; *See also* "527 Basics." OpenSecrets.
[14] Dorothy Lund, Leo Strine. "Corporate Political Spending is Bad Business: How to Minimize the Risks and Focus on What Counts." Harvard Law School Forum on Corporate Governance. January 11, 2022.
[15] Peter Overby. "For Tax-Exempt Groups, How Much Politics is Too Much?" *NPR*. May 13, 2013.
[16] Michael Luo, Stephanie Strom. "Donor Names Remain Secret as Rules Shift." *New York Times*. September 20, 2010.
[17] Susan Leahy. "PATH Act Requires 501(c)(4) Organizations to Provide Notice to IRS After Formation." Covington. December 22, 2015.
[18] Dave Levinthal. "As Applications Swell, IRS Nonprofit Division Overloaded, Understaffed." NBC News. May 14, 2013.

Despite different disclosure requirements of 501(c)(4) and 527 organizations, both groups are often funded through contributions of "soft money," defined as money donated in a way that avoids federal regulation or limits, and both typically attempt to influence elections through "issue ads." Ads are determined to be issue ads if they do not use what a Supreme Court footnote in Buckley v. Valeo deemed "magic words," such as "vote for," "vote against," "elect" or "defeat."[19] However, these ads are, more often than not, thinly veiled attacks on or promotions of candidates.

As an example, the Brennan Center for Justice at New York University Law School cites a 2000 issue ad titled "Is That the Change You Want." The ad, it noted, "concludes with, 'Eight Nobel Prize winners in economics warn: George W. Bush's plans exhaust the surplus and do not add up. Is that the economic change you want?' Nowhere does the ad say, 'vote against George W. Bush.' Yet no viewer could possibly miss that message. Since the ad forgoes magic words, the Democratic Party claimed this commercial was an issue ad and paid for it with unregulated soft money."[20]

As the line between candidate ads and issue ads has blurred, companies donating to these groups may face significant reputational risks. In November 2012, for example, a Montana judge allowed the release of bank records from the Western Tradition Partnership ("WTP"), a 501(c)(4) organization that had been extensively involved in recent Montana elections. This represented the first time a court had ordered a "modern dark money group's donors to be made public," which effectively "[fired] a warning shot to similar organizations involved in politics."[21] If this judicial order stands as precedent, it may not be the last time a social welfare organization is required to reveal its donors. Given that possibility, companies should ensure that they thoroughly vet organizations to which they make contributions to mitigate any potential reputational risks that they may face should their contributions be revealed.

In an attempt to remedy the historically lax oversight afforded to these advocacy organizations, in November 2013 the Treasury Department and the IRS announced proposed rules that would expand and clarify how the IRS defines political activity and establish clearer limits for how politically active 501(c)(4) organizations may be. Under the proposed rules, candidate events or ads that mention a candidate within 60 days of an election would be excluded from the definition of "social welfare."[22] This would be a stark departure from the status quo, as the IRS has never formally specified what types of spending are classified as political or non-political.

However, a bill proposed in January 2015 by congressional Republicans sought to forbid the IRS from issuing new rules for the groups until the end of 2017, so that pending congressional investigations could contribute to the rulemaking.[23] In July 2018, conservatives were successful in pressuring the IRS to excuse certain tax-exempt groups from providing names and addresses of donors. Social-welfare groups and other tax-exempt

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[19] *Buckley v. Valeo*, 387 F. Supp. 135. *See also* "Straight Talk on Campaign Finance: Separating Fact from Fiction Paper No. 5." Brennan Center for Justice at New York University School of Law. January 1, 2000.
[20] "Straight Talk on Campaign Finance: Separating Fact from Fiction Paper No. 5." Brennan Center for Justice at New York University School of Law. January 1, 2000.
[21] Sarah Tory. "Judge Reveals 'Dark Money' Donors." *Slate*. November 5, 2012.
[22] Nicholas Confessore. "New Rules Would Rein In Nonprofits' Political Role." *New York Times*. November 26, 2013.
[23] Bernie Becker. "Republicans Intensify Battle With IRS." *The Hill*. January 28, 2015.

organizations, besides charitable and political organizations, still must keep donor information in their own records to be made available to the IRS in the event of audits, but they don't have to provide it otherwise.[24]

Given the politically charged environment surrounding their status, and the legal uncertainties of their classification, companies should carefully consider any donations to or involvement with such groups.

The American Legislative Exchange Council ("ALEC")

One specific advocacy organization that has gained significant attention from media and investors in recent years is the American Legislative Exchange Council ("ALEC"), a registered 501(c)(3) organization. Similar to 501(c)(4) organizations, 501(c)(3) organizations are nonprofit groups focused on benefiting society, specifically through religious, charitable, or educational means. However, 501(c)(3) organizations are much more restricted in the amount of lobbying and advocacy they may do, and they are not permitted to engage in activities directly related to elections. Further, although both 501(c)(4) organizations and 501(c)(3) organizations are tax-exempt, only 501(c)(3) organizations can receive tax-deductible contributions.

According to its website, ALEC is "America's largest nonpartisan, voluntary membership organization of state legislatures dedicated to the principles of limited government, free markets and federalism," though in practice ALEC's members, including corporations, draft model legislature on a wide variety of issues. However, the organization has suffered a great deal of reputational damage due to its promotion of controversial bills such as the "stand your ground" self-defense provisions. After the shooting of Trayvon Martin in 2012, several major companies, including McDonalds and Coca-Cola, ended their associations with ALEC.[25]

ALEC disbanded the task force that drafted the "stand your ground" legislation, but companies' associations with ALEC continued to cause significant reputational concerns for many investors. A group of 40 investors sent letters to 49 major companies about their membership in ALEC, urging them to "reconsider the business rationale for continuing a relationship with [ALEC]." Over the past few years, ALEC has lost numerous corporate members and hundreds of state legislators and is facing a crisis of funding because of the controversy.[26] In 2014, Google left ALEC, saying that "they're just literally lying" about climate change.[27] In 2018, major corporations that left ALEC included AT&T, Honeywell, Dow Chemical, and ExxonMobil.[28,29] In 2019, Comcast, Takeda Pharmaceuticals, and Cox Communications followed suit.[30,31]

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[24] Naomi Jagoda. "IRS Reduces Donor Reporting Rules for Some Tax-Exempt Groups." *The Hill*. July 16, 2018.
[25] Arian Campo-Flores, Joe Palazzolo, Mike Esterl. "'Stand Your Ground' Backer Retreats, and New Bills Stall." *The Wall Street Journal.* April 17, 2012.
[26] Ed Pilkington, Suzanne Goldenberg. "ALEC Facing Funding Crisis from Donor Exodus in Wake of Trayvon Martin Row." *The Guardian*. December 3, 2013.
[27] Brian Fung. "Google: We're Parting with the Climate Change Skeptics at ALEC." *The Washington Post*. September 22, 2014.
[28] Gary McWilliams. "Exxon Mobil Joins Exodus of Firms from Lobbying Group ALEC." *Reuters*. July 12, 2018.
[29] David Armiak. "AT&T Drops ALEC for Hosting Hate Speech." *PR Watch*. November 30, 2018.
[30] Bob Fernandez. "Comcast Leaves Conservative 'Think Tank' Behind Voter ID, Stand-Your-Ground Laws." *The Philadelphia Inquirer*. June 10, 2019.
[31] Jay Riestenberg. "Coalition Letters to ALEC Corporate Funders." Common Cause. August 26, 2018.

Campaign Finance Regulations and Court Cases

Citizens United v. Federal Election Commission

In 2008, Citizens United, a conservative nonprofit group funded primarily through individual contributions, released a documentary called *Hillary: The Movie*. The film, which was highly critical of Hillary Clinton's 2008 presidential campaign, was released in theaters and on DVD. While not restricted under the Bipartisan Campaign Reform Act ("BCRA" or "McCain-Feingold Act"), the legality of the group's attempt to make the film available as a video-on-demand cable selection and to run commercials for the movie on television was challenged. The BCRA restricts corporations and labor unions from using general treasury revenue to engage in "electioneering communications" 30 days before a primary election or 60 days before a general election. The BCRA also specifically restricts any broadcast, cable, or satellite communication that could be received by at least 50,000 people and that referred to "a clearly identified candidate for federal office."

After it was prohibited from airing the film using video-on-demand capabilities, Citizens United sued the Federal Election Commission ("FEC"), claiming that video-on-demand was not a mass airing as defined by the BCRA. The case was subsequently appealed to the Supreme Court in November 2008. On January 20, 2010, the court ruled in favor of Citizens United, in a 5-4 decision that overturned a variety of earlier decisions and invalidated several state laws and federal acts. The new ruling rejected distinctions of applicability of the First Amendment based on the identity of the speaker, essentially giving corporations the same political spending and political speech protection under the First Amendment as that afforded to an individual. Fundamentally, *Citizens United v. Federal Election Commission* found that corporate funding of independent political broadcasts in candidate elections is protected under the First Amendment and therefore may not be restricted.[32]

As a result of this ruling, advocacy organizations have significantly greater freedom to run television ads and fewer restrictions on the permissible language in those ads.[33] Further, corporations and labor unions for the first time can use money from their general treasuries to pay for political ads that expressly call for the election or defeat of a specific candidate and to donate unlimited amounts to various organizations, groups, and committees.[34] The Citizens United ruling did not impact direct corporate contributions to national political parties or committees controlled by federal officeholders, which are prohibited under federal law.

Currently, federal law caps an individual's donations to a single federal candidate at $3,300 per election, while companies can donate up to $5,000 per election to candidates through PACs funded by voluntary employee donations. While an Eastern Virginia judge attempted to overturn these restrictions in 2011, based on the Citizens United ruling,[35] a federal appeals court overturned this decision, ruling that allowing corporations to make direct contributions to candidates "ignores the well-established principle that independent expenditures

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[32] "A Free Speech Landmark." *The Wall Street Journal*. January 22, 2010
[33] "Defining the Press Exemption from Campaign Finance Restrictions." *Harvard Law Review*. Vol. 129(5). March 10, 2016.
[34] Spencer MacColl. "Citizens United Decision Profoundly Affects Political Landscape." OpenSecrets. May 5, 2011.
[35] Brody Mullins. "Judge Upholds His Ruling to Let Companies Donate to Candidates." *The Wall Street Journal*. June 7, 2011.

and direct contributions are subject to different government interests."[36] The Supreme Court allowed this ruling to stand by rejecting the petition for a writ of certiorari in 2013.[37]

In recent years, the majority of Americans, including 85% of Democrats and 66% of Republicans, have expressed support for overturning Citizens United with a constitutional amendment to reduce money in politics.[38] Many elected officials have also publicly expressed a desire to overturn the landmark ruling, but it remains to be seen if they would actually take action given that most of them also benefit from it. Despite public support, lawmakers tasked with action are not expected to make a change because changing the ruling would hurt them. The late republican Senator Walter Jones of North Carolina was a supporter of campaign finance reform for decades, but said: "I'm not sure anyone in Washington wants to change it, they talk about it but they don't do much about it. Both parties benefit from the current system."[39]

McCutcheon v. Federal Election Commission

In October 2013, campaign finance laws were again debated by the Supreme Court in the case of *Shaun McCutcheon v. Federal Election Commission*. In this case, Mr. McCutcheon wanted to donate more than was allowed by laws capping donations to candidates and certain political committees, which he argued was a violation of the First Amendment. Prior to this case, FEC laws stated that individuals were subject to biennial limits on contributions. Specifically, individuals had: (i) a $48,600 limit on contributions to candidate committees, and (ii) a $74,600 limit in contributions to any other committees, of which no more than $48,600 may be given to committees that are not national party committees.

In addition to these limitations, individuals were restricted from giving more than $2,600 to a specific candidate for federal office, per election per cycle. In April 2014, the Supreme Court ruled against the FEC and struck down the aggregate limit on contributions that may be made by individuals, while leaving the limits on contributions to specific federal candidates or PACs in place. As a result, individuals are free to contribute to as many separate candidates and committees as they wish.

The issue of caps on contributions was not addressed by Citizens United. Professor Richard L. Hasen, an expert on election law at the University of California, Irvine, states that McCutcheon "could be the start of chipping away at contribution limits," and may represent a fundamental reassessment of *Buckley v. Valeo,* which stated that contributions could be regulated more strictly than expenditures as a result of their potential for corruption.[40] Following the Supreme Court hearing on McCutcheon, former President Obama stated that removing overall limits on political contributions could potentially destroy what was left of campaign finance regulation and that it "would say anything goes: there are no rules in terms of how to finance campaigns."[41]

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[36] Andrew Longstreth. "Court Upholds Ban on Corporate Political Contributions." *Reuters*. June 28, 2012.
[37] Erin Fuchs. "The Supreme Court Won't Let Corporations Line Politicians' Pockets." *Business Insider*. February 25, 2013.
[38] Ashley Balcerzak. "Study: Most Americans Want to Kill 'Citizens United' with Constitutional Amendment." *The Center for Public Integrity*. May 10, 2018.
[39] Sarah Kleiner. "Democrats Say 'Citizens United' Should Die. Here's Why That Won't Happen." *The Center for Public Integrity*. August 31, 2017.
[40] Adam Liptak. "Justices Take Case on Overall Limit to Political Donations." *New York Times*. February 19, 2013.
[41] Adam Liptak. "Supreme Court Again Weighs Spending Limits in Campaigns." *New York Times*. October 8, 2013.

Republican Party of Louisiana v. Federal Election Commission

In the case *Republican Party of Louisiana v. FEC*, the Louisiana Republican party ("LAGOP") and other local party committees challenged campaign finance rules that impose contribution limits and restrict the source of funds used by state and local political party committees for federal election activity. The district court ruled in favor of the FEC, but LAGOP filed an appeal which took the case to the Supreme Court where LAGOP challenged the constitutionality of prohibiting the spending of "soft money," which refers to funds raised outside of those allowed for use on federal election activity ("hard money"), such as funds contributed by corporations. The plaintiffs argued that limiting the contribution amounts state and local parties can receive is a violation of the First Amendment. Previous court rulings had been in favor of restricting soft money contributions as they can create a risk of *quid pro quo* corruption.[42] In May 2017, the Supreme Court affirmed the district court's ruling in favor of the FEC.

While organizations such as LAGOP are taking legal action to loosen campaign finance regulation, critics of the precedent established by the Citizens United case remain vocal. A 2015 poll showed that Americans favored an overhaul of campaign finance rules that shield the sources of campaign contributions.[43] This echoes the sentiments of political leaders across party lines and dozens of states who have passed symbolic advisory measures asking Congress for a constitutional amendment regarding the Citizens United decision.

Effects of Citizens United on Corporate Political Spending

Shortly after the Citizens United ruling, many believed corporate interests would overrun those of citizens. However, research has found that corporate funds may not be to blame for the drastic increase in political spending. During the 2012 election cycle, only a handful of mostly privately-owned corporations spent approximately $75 million from their treasuries on federal elections, a figure which totaled only 1% of the estimated $6 billion in spending during the 2012 election cycle. Moreover, nonprofit spending accounted for, at most, only $318 million of the total spending in 2012, falling short of the anticipated amounts.[44]

A 2013 study concluded that the post-Citizens United increase in spending was largely due to individual, not corporate, contributions. This pattern persisted in 2014 when individual donors accounted for 60% of total contributions to Super PACs, and in 2016 when they accounted for 68%. When measuring the total amount of money raised to finance federal election activity those numbers are 88% and 90%, respectively.[45]

The 2013 study found that the spending behavior of the largest U.S. companies remained similar between 2008 and 2012: PAC spending remained constant, there was no spending on electioneering communications from the general treasury, and only nine of the more than 500 companies reviewed gave to super PACs. However, the study's authors noted that they were unable to analyze corporate donations to nonprofit groups, and an official

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[42] "Republican Party of Louisiana v. FEC (Amicus Brief)." Brennan Center for Justice. May 22, 2017.
[43] Nicholas Confessore, Megan Thee-Brenan. "Poll Shows Americans Favor an Overhaul of Campaign Financing." *New York Times.* June 2, 2015.
[44] Adam Bonica. "Avenues of Influence: On the Political Expenditures of Corporations and Their Directors and Executives." *Business and Politics*, 18(4), p. 367-394. February 23, 2017.
[45] "The Landscape of Campaign Contributions: Campaign Finance after Citizens United*.*" Committee for Economic Development of the Conference Board. July 10, 2017.

analysis of this issue would be impossible without improved transparency requirements for these organizations.[46]

However, it is possible that these donations are being made by companies under the guise of personal expenditures by their executives. A University of Texas at Austin study found executives and company-sponsored PACs make campaign contribution decisions as if they share a joint utility function. The researchers demonstrated that one of the reasons individuals make more significant campaign contributions when they serve in leadership roles is that they are giving strategically on behalf of their organization, rather than giving only in-line with their personal preferences.[47]

However, a separate study disputes those findings. Adam Bonica, a political scientist at Stanford, found that the political preferences of those at the tops of large organizations typically span the ideological spectrum, suggesting that either the choices of which candidates to support primarily reflects the donor's personal preferences or that these individuals do not share a mutual understanding of which candidates and policies are in the best interests of their respective companies. Specifically, Bonica found that corporate political spending tended to be slightly more pro-Republican than the partisan center. However, the spending of corporate executives tends to create an inverse bell curve, with the most spending falling into either heavily Democratic or heavily Republican causes. The author suggests that this ideological diversity "protects citizens from corporate funded elections."[48,49]

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[46] Michael Rocca, Wendy L. Hansen, Brittany Ortiz. "The Effects of Citizens United on Corporate Contributions in the 2012 Presidential Election." APSA 2013 Annual Meeting Paper. August 22, 2013.
[47] Brian Kelleher Richter, Timothy Werner. "Campaign Contributions from Corporate Executives In lieu of Political Action Committees." p.32. May 21, 2013.
[48] Adam Bonica. "Avenues of Influence: On the Political Expenditures of Corporations and Their Directors and Executives." September 15, 2015.
[49] Eduardo Porter. "How Companies and Executives Diverge Politically." *New York Times.* September 4, 2013.

Academic Research

Many have argued that the most direct effects of corporate political spending and related activities are seen at a reputational level. As the reputational effects of such spending and activity can be extremely difficult to quantify, it can be challenging for investors to accurately gauge how and to what degree they should intervene in companies' decisions on political spending and its disclosure. However, over the past several years, academics have tried to measure the impacts of political activity and disclosure on corporate performance.

Political Spending and Corporate Governance

Corporate political activity and related disclosure could arguably be seen as a proxy for overall corporate governance; this is supported by a 2012 study that suggested that corporate political donations could be symptomatic of agency problems within corporations, finding that an increase of $10,000 in corporate political spending is associated with a reduction in excess returns of 7.4 basis points. It also suggested that statistically significant poor corporate governance practices regarding board size, an independent chair or lack thereof, and institutional ownership are associated with larger political donations. The researchers further found that firms that make corporate political donations are more likely to engage in acquisitions than firms that do not, and that the acquisitions performed more poorly than those made by firms that do not participate in corporate political spending, as measured by cumulative abnormal announcement returns.[50] More recently, a 2018 study found that politically active firms saw an increase in risk with regards to stock return volatility and a decrease in firm value as indicated by Tobin's Q.[51]

Political activity may also be indicative of factors related to effective management and oversight, as suggested by a 2011 study by a researcher at the University of Western Ontario, which found a relationship between corporate social responsibility, corporate political activity, and firm value. The study found that most lobbying occurs at firms that are either the most or the least socially responsible and that the interaction between a firm's level of corporate social responsibility and its lobbying intensity appears to increase firm value. The author suggests that a firm's corporate social responsibility activities "work as an economic complement to its political activity rather than a substitute—jointly the two types of non-market behavior increase a firm's value, while independently each activity is more difficult to reconcile and perhaps may simply be symptomatic of some other inherently unobservable firm-fixed characteristic such as 'good management.'"[52] In a similar vein, a 2016 UCLA study that looked specifically at environmental issues proposed a U-shaped relationship between issue performance and political activity. That is, while the conventional view states that 'dirty' firms will increase their

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[50] Rajesh K. Aggarwal, Felix Meschke, Tracy Yue Wang. "Corporate Political Donations: Investment or Agency?" *Business and Politics*. Vol. 14(1), Article 3, (p.27). 2012.
[51] Saumya Prabhat, David M. Primo. "Risky Business: Do Disclosure and Shareholder Approval of Corporate Political Contributions Affect Firm Performance ?" *Business and Politics*, Vol. 21(2), pp. 1-35. December 2018.
[52] Brian Kelleher Richter. "'Good' and 'Evil': The Relationship Between Corporate Social Responsibility and Corporate Political Activity." SSRN Electronic Journal. January 28, 2011.

political activity to stop regulation, 'green' firms can also benefit from such activity because more stringent regulations are to their benefit.[53]

Other researchers have further demonstrated the link between effective management of corporate resources and political activity. For example, a 2012 Harvard Law School study found that in industries that are not heavily regulated or dependent upon government, corporate political activity could be associated with weaker shareholder rights, greater signs of managerial agency costs, such as corporate jet use by CEOs, and lower corporate value, as measured by industry-relative Tobin's Q.[54] This trend was reiterated in a 2013 study suggesting that CEO pay is positively correlated with the incidence of lobbying.[55]

Further studies have also supported the notion that more corporate political activity is directly correlated with weak corporate governance practices. In 2010, a Harvard study found that, for the period 1998-2004, strong corporate governance practices were strongly and consistently negatively related to observable corporate political activity, and that such activity negatively related to firm value. The study concludes that its findings "together with the likelihood that unobservable political activity is even more harmful to shareholder interests – imply that laws that replace the shareholder protections removed by Citizens United would be valuable to shareholders."[56]

Perhaps to mitigate governance risks and to capitalize on the opportunities associated with corporate political activity, companies appear to be increasingly adopting more stringent oversight of political spending. A review by the Sustainable Investments Institute found that in 2011, 31% of S&P 500 companies had explicit board oversight of corporate political spending, as opposed to 23% the previous year.[57] Additionally, according to the2023 CPA-Zicklin Index, 314 companies (63.3%) in the S&P 500 have general board oversight of political spending, up from 307 in 2022, 295 in 2021, 259 in 2020, and 237 in 2019. The number of companies that task a specified board committee with reviewing corporate political expenditures was 282 in 2023, up from 168 in 2015; and with reviewing payments to trade associations, was 263 in 2023, up from 120 in 2015.

Political Activity Boosting Corporate Performance

Some researchers have found that corporate political activity may be in shareholders' best interests. For example, in one study of firm-level contributions to U.S. political campaigns from 1979 to 2004, researchers found that measures of support for candidates were positively and significantly correlated with a cross-section of future returns. This was especially the case when those contributions went to a large number of candidates in the same state as the contributing firm.[58] Further, a 2013 study by a researcher from the London Business

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[53] Magali Delmas, Jinghui Lim, Nicholas Nairn-Birch. "Corporate Environmental Performance and Lobbying." *Academy of Management Discoveries*, Vol. 2(2), pp. 175-197. 2016.
[54] John C. Coates, IV. "Corporate Politics, Governance, and Value Before and After Citizens United." *Journal of Empirical Legal Studies*, Vol. 9(4), pp. 657-696. 2012.
[55] Hollis Ashbaugh Skaife, David Veenman, Timothy Werner. "Corporate Lobbying and CEO Pay." SSRN. November 19, 2013.
[56] 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*. December 5, 2010.
[57] Heidi Welsh, Robin Young. "Corporate Governance of Political Expenditures: 2011 Benchmark Report on S&P 500 Companies." Sustainable Investments Institute, IRRC Institute. November 16, 2011.
[58] Michael J. Cooper, Huseyin Gulen, Alexei V. Ovtchinnikov. "Corporate Political Contributions and Stock Returns." *The Journal of Finance*, Vol. 65(2), pp. 687-724. April 2010.

School found that the loss of a Senate connection to a politician who sits on the committee responsible for overseeing discretionary government spending leads to an average decrease in future sales of $1.9 billion, suggesting that campaign contributions made by firms represent investments in political capital and can have significant value to companies.[59]

Lobbying may also play a key role in ensuring positive corporate performance. A 2011 study found that firms that spend more on lobbying have higher market valuations relative to firms with smaller lobbying expenditures, suggesting that engaging in lobbying activities may be a strategically effective way for some companies to increase firm value.[60] One benefit of political activity may be seen in reduced taxes.

A 2008 study published in the *American Journal of Political Science* found that, on average, companies with higher lobbying expenditures in one year generally pay lower effective tax rates the following year. Specifically, the researchers found that increasing registered lobbying expenditures by 1% appears to lower effective tax rates by 0.5 to 1.6 percentage points for the average firm that engages in lobbying activities.[61] This could be due to more aggressive tax strategies for politically active firms.

A 2013 study found evidence that corporate political connections, including the employment of former politicians as directors, corporate campaign contributions, and lobbying, are associated with higher levels of aggressive tax avoidance strategies. The study's authors suggest that politically connected companies can afford more complicated and aggressive tax planning because they face lower costs of tax aggressiveness in the form of lower capital market pressure for transparency.[62]

However, it should be noted that a different study found that while lobbying activities tend to increase firm value, a portion of this value may be attributed to corruption. Researchers in a separate study also noted that there tended to be a negative market response to legislative restrictions on corrupt practices, which suggests that stock market participants may see unethical lobbying tactics as daring or value-enhancing.[63]

A 2014 study on corporate lobbying and firm performance confirms this finding. Looking at public lobbying data in a pooled regression, this study found that "lobbying expenditures are on average positively correlated with financial performance." The study further found that firms with the highest lobbying intensities outperformed the benchmarks of non-lobbying firms but qualifies this finding by noting that lobbying presents discrete opportunities, is firm-specific, and may also have a negative signaling effect in the contemporary political climate.[64]

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[59] Pat Akey. "Valuing Changes in Political Networks: Evidence from Campaign Contributions to Close Congressional Elections." *The Review of Financial Studies*, Vol. 28(11), pp. 3188-3223. November 2015.
[60] Matthew D. Hill, G. Wayne Kelly, Robert A. Van Ness. "Determinants and Effects of Corporate Lobbying." *Financial Management Association International*, Vol. 42(4), pp. 931-957. September 23, 2013.
[61] Brian Kelleher Richter, Krislert Samphantharak, Jeffrey F. Timmons. "Lobbying and Taxes." *American Journal of Political Science*, Vol. 53(4), pp. 893-909. December 10, 2011.
[62] Chansog Kim, Liandong Zhang. "Corporate Political Connections and Tax Aggressiveness." *Contemporary Accounting Research, Forthcoming*. August 16, 2014.
[63] Alexander Borisov, Eitan Goldman, Nandini Gupta. "The Corporate Value of (Corrupt) Lobbying." *European Corporate Governance Institute-Finance Working Paper*. November 2014.
[64] Hui Chen, David C. Parsley, Ya-Wen Yang. "Corporate Lobbying and Firm Performance." *Journal of Business Finance & Accounting*, Vol. 42(3-4). April/May 2015.

Politically active companies may also be adopting strategies to mitigate the risks of such activity, according to a 2011 study that found that companies with an elevated level of political engagement tend to adopt more conservative accounting practices. The researchers believe this could be because “firms more actively engaged in lobbying are likely to trigger more scrutiny than firms less actively so engaged,” and that “firms with political connections may also be more likely to trigger scrutiny than firms without such connections.”[65]

Corporate political activity may also increase a company’s ability to receive government assistance, particularly in times of crisis. A 2011 study found that financial institutions that engaged in lobbying activities or that had other types of political connections received a greater amount of support under the 2008 Troubled Asset Relief Program (“TARP”) earlier than companies not engaged in such activities. The researchers found that for every dollar spent in the five years prior to TARP, these companies received between $485.77 and $585.65 in TARP support.[66]

Similarly, a 2015 study using a large sample of commercial and savings banks found that “banks engaged in lobbying activities have lower probabilities of receiving an enforcement action.”[67] Further, a study of government bailouts found that politically connected firms were more likely to receive them but also that they were more likely to exhibit significantly worse financial performance than non-connected companies at the time of the bailout and for the following two years.[68]

Political Activity Harming Shareholder Value

While some researchers have found a positive association between corporate performance and political activity, others have found that such activity may harm shareholder interests. Emerging evidence suggests that corporate donations “can destroy value by suppressing innovation and distracting managers from more-pressing tasks.”[69] For example, John Coates of Harvard Law School has found that corporate political activity could be associated with lower corporate value. Specifically, Coates found that companies in the S&P 500 that are politically active through company-controlled PACs, registered lobbying, or both, had lower price-to-book ratios than industry peers that were not politically active.

While these findings were true from 1998 to 2004, this disparity became even more significant following the 2010 Citizens United decision, when politically active firms had, on average, 24% lower price/book ratios than their industry peers after controlling for factors including profit, sales growth, leverage, size, and shareholder rights.[70] Additionally, in a separate 2012 study, Coates found that firms that engaged in political activities in

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[65] Xiangting Kong, Suresh Radhakrishnan, Albert Tsang. “Corporate Lobbying, Visibility and Accounting Conservatism.” *Journal of Business Finance & Accounting*, Vol. 44(5-6), pp. 527-557. May/June 2017.
[66] Benjamin M. Blau, Tyler Brough, Diana Weinert Thomas. “Corporate Lobbying, Political Connections, and the Bailout of Banks.” *Journal of Banking & Finance*, Vol. 37(8), pp.3007-3017. August 2013.
[67] Thomas Lambert. “Lobbying on Regulatory Enforcement Actions: Evidence from U.S. Commercial and Savings Banks.” *Management Science*, Vol. 65(6), pp. 2545-2572. July 6, 2019.
[68] Mara Faccio, Ronald W. Masulis, John J. McConnell. “Political Connections and Corporate Bailouts.” *Journal of Finance*, Vol. 61(6), pp. 2597-2635. November 2, 2010.
[69] Dorothy S. Lund, Leo E. Strine. “Corporate Political Spending is Bad Business: How to Minimize the Risks and Focus on What Counts.” *Harvard Business Review*. January-February 2022.
[70] John Coates, Taylor Lincoln. “Fulfilling Kennedy’s Promise: Why the SEC Should Mandate Disclosure of Corporate Political Activity.” Harvard Law School, Public Citizen. September 2011.

2008 experienced, on average, an 8% lower increase in industry-relative shareholder value from their financial crisis-era lows when compared to firms that were not politically active in 2008. The researcher suggests that this finding is consistent with Citizens United "inducing an increase in unobservable political activity by previously politically active firms, with a significant attendant drag on shareholder value."[71]

Further, a 2012 study of political contributions from 1991 to 2004 found political donations were negatively correlated with future excess returns and the findings demonstrated only limited support for the contention that political donations represent an investment in political capital.[72]

The negative effects of political activity may have been especially profound for shareholders of companies engaged in mortgage lending. A 2009 study by economists from the International Monetary Fund investigated the relationship between lobbying by financial institutions and mortgage lending. The researchers suggested that the political influence of the financial industry can be associated with the accumulation of risks and provided some support for the view that prevention of future crises might require closer monitoring of lobbying activities and weakening the political influence of the industry. The researchers found that lenders that lobbied more intensively on mortgage-related regulation had: (i) more lax lending standards, as measured by loan-to-income ratio, (ii) a greater tendency to securitize loans, and (iii) faster growing mortgage loan portfolios. The study's authors also found that the companies which lobbied more intensively experienced negative abnormal stock returns and suggested that their findings "seem to be consistent with a moral hazard interpretation whereby financial intermediaries lobby to obtain private benefits, making loans under less stringent terms," and that these firms may "expect to be bailed out when losses amount during a financial crisis or because they privilege short-term gains over long-term profits."[73]

The negative effects of political activity may also be profound for firms engaged in extensive lobbying at times when news events raise public awareness of lobbying. For example, one study found that, on average, a firm that spent $100,000 or more lobbying from 2002-2005 suffered a loss of $1.2 million in value when lobbyist Jack Abramoff pled guilty to bribing politicians.[74] So called "defensive" lobbying is also on the rise, with companies fighting not to change the laws governing them or to gain an advantage through the government but simply to maintain the status quo and continue doing business as they always have. Alphabet (formerly Google) is a prime example of this tactic; its lobbying expenses rose from less than $50,000 in 2002 to more than $18 million in 2012, largely to minimize new government interference.[75] In 2018, its spending reached $21.2 million.[76] While its lobbying spend decreased in 2020 when it restructured its government relations team, Alphabet's U.S.

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[71] John C. Coates, IV. "Corporate Politics, Governance, and Value Before and After Citizens United." *Journal of Empirical Legal Studies*, Vol. 9(4), pp. 657-696. 2012.
[72] Rajesh K. Aggarwal, Felix Meschke, Tracy Yue Wang. "Corporate Political Donations: Investment or Agency?" *Business and Politics*, Vol. 14(1), Article 3. April 2012.
[73] Deniz Igan, Prachi Mishra, Thierry Tressel. "A Fistful of Dollars: Lobbying and the Financial Crisis." The International Monetary Fund. October 14, 2009.
[74] Alexander Borisov, Eitan Goldman, Nandini Gupta. "The Corporate Value of (Corrupt) Lobbying." *European Corporate Governance Institute-Finance Working Paper*. November 2014.
[75] Jonathan Taplin. "Why is Google Spending Record Sums on Lobbying Washington?" *The Guardian.* July 30, 2017.
[76] Reuters. "Google Set a New Company Record, Spending More Than $20 Million, to Lobby the US Government in 2018." *Business Insider*. January 22, 2019.

lobbying expenditures increased 27% in 2021 compared to 2020 as several bills were introduced in Congress to limit the power of big technology firms.[77]

Ultimately, we recognize that political engagement is a business decision, the benefits and costs of which each company must weigh in the context of its circumstances and business environment. When companies choose to participate in the political process, however, it appears that disclosure of such participation may be correlated with increased shareholder value. A 2011 Harvard study found that, after controlling for size, leverage, research and development activities, three-year sales growth, and whether companies have active PACs, companies with political disclosure policies had a 7.5% higher industry-adjusted price-to-book ratio than other firms as of year-end 2010. While the researchers concede that it is uncertain whether such disclosure policies cause higher price-to-book ratios, their findings are consistent with the theory that "well-managed companies responsive to shareholder concerns tend to be more highly valued than other companies."[78]

Further, in a tumultuous media and political environment, risk inherent to corporate political spending is exacerbated if it appears to contradict companies' central values and positions. Take, for example, the 2016 passage of HB2 in North Carolina, which prohibited transgender individuals from using public bathrooms that corresponded to their gender identity and blocked local governments from enacting anti-discrimination and minimum wage laws. High-profile news articles identified 45 corporations that both voiced opposition to the law and contributed to the Republican State Leadership Committee, which works to elect Republican state legislatures and played a role in electing North Carolina's legislative majority in 2010. Similarly, in response to a 2016 Mississippi law that permitted businesses and government officials to deny services to LGBT people based on religious objections, 24 companies came under fire either for publicly opposing the law or for supporting it through donations to Governor Phil Bryant, who signed the bill into law, and to the bill's sponsors. Conflicting donations have also been scrutinized in the context of climate change. Specifically, 27 companies were singled out in a Center for Public Integrity article for publicly supporting the United States' role in the Paris Agreement while also contributing to the Republican Attorneys General Association; in 2015, most Republican Attorneys General sued to repeal the Clean Power Plan, which was a critical component of the U.S.'s Paris commitment.[79] In addition, even though well-known companies such as Walmart, Coca-Cola, AT&T, and Amazon have all implemented policies or set goals to reduce their GHG emissions, their corporate treasury money has helped elect state attorneys general who have acted to prevent the reduction of emissions in nine separate court cases.[80] In response to such issues, a coalition of investor advocates recently created a Global Standard on Responsible Climate Lobbying to measure whether companies' lobbying efforts undermine the Paris Agreement.[81]

Companies' lobbying activity can present regulatory and legal risk, particularly when it conflicts with governmental policy. For instance, in 2020, the California Public Advocates Office recommended a $255 million

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[77] Diane Bartz, Paresh Dave. "Google U.S. Lobbying Jumps 27% as Lawmakers Aim to Rein in Big Tech." Reuters. January 20, 2022.

[78] John Coates, Taylor Lincoln. "Fulfilling Kennedy's Promise: Why the SEC Should Mandate Disclosure of Corporate Political Activity." Harvard Law School, Public Citizen. September 2011.

[79] "Collision Course: The Risks Companies Face When Their Political Spending and Core Values Conflict, and How to Address Them." *Center for Political Accountability*. June 19, 2018.

[80] "Hollow Politics: When Corporations' Political Spending and Emissions Goals/Policies Conflict." Center for Political Accountability. February 23, 2022.

[81] Laura Peterson. "ExxonMobil Shows its Lobbying Hand, but Hides Some Cards."*CleanTechnica*. April 5, 2022.

fine against Southern California Gas Co. ("SoCalGas"), a subsidiary of Sempra Energy, for using ratepayer money to lobby against energy efficiency rules and local gas bans. Although SoCalGas had publicly expressed its support of California's climate goals, a Public Advocates Office investigation found that it had used money from customers to help create a grassroots advocacy group and to fund national trade groups that advocate for gas use, violating state laws that require monopoly utilities to spend ratepayer money exclusively on programs that benefit ratepayers.[82] In its November 2020 briefing, the Public Advocates Office described SoCalGas's advocacy as "a concerted effort to undermine [California's] energy efficiency goals … which in turn undermines the state's climate goals." Further, in February 2022, SoCalGas was fined $10 million by the California Public Utilities Commission for unlawful lobbying.[83]

The swift corporate response to the January 2021 pro-Trump mob attack on the United States Capitol, which struck during a debate over whether to certify Joe Biden's victory over Donald Trump in the presidential election, demonstrated how deeply embedded an understanding of risk related to corporate political spending has become for public companies. In response to the attack, major companies including AT&T, Amazon, Comcast, Ford, Best Buy, Marriott International, Walmart, Airbnb, Dow, and Walt Disney Co. suspended all corporate PAC contributions to any member of Congress who voted against the certification of the presidential election results. American Airlines, BP, ConocoPhillips, UPS, General Motors, and the Coca-Cola Company said they would pause all of their political donations, while FedEx, CVS Heath, Delta and Exxon Mobil said they would review their future political contributions.[84] Kansas City, Missouri-based Hallmark even requested the return of campaign contributions that its PAC made to Senators Josh Hawley of Missouri and Roger Marshall of Kansas, who both voted against certifying the presidential election results.[85]

In total, of the top 30 corporate backers of the GOP lawmakers that sought to overturn the election results, 20 suspended some or all donations in response to the violence at the Capitol.[86] However, as highlighted by OpenSecrets, these companies had not excluded donating to dark money groups and other politically active nonprofits, which tend to receive more from companies compared to the amounts spent through corporate PACs.[87]

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[82] Sammy Roth. "SoCalGas Should Be Fined $255 Million for Fighting Climate Action, Watchdog Says." *Los Angeles Times.* November 6, 2020.
[83] David Gotfredson. "Sempra Company Fined $10 Million for 'Unlawful' Lobbying." CBS8. February 21, 2022.
[84] Neil Vigdor, et al. "These Businesses and Institutions Are Cutting Ties With Trump." *New York Times*. January 27, 2021.
[85] Kate Kelly, Emily Flitter, Shane Goldmacher. "Companies Pull Back Political Giving Following Capitol Violence." *New York Times*. January 11, 2021.
[86] Douglas MacMillan, Jena McGregor. "Lawmakers Who Objected to Election Results Have Been Cut Off From 20 of Their 30 Biggest Corporate PAC Donors." *The Washington Post*. January 19, 2021.
[87] Anna Massoglia. "Corporations Rethinking PACs Leave the Door to 'Dark Money' Open." OpenSecrets. January 15, 2021.

Investor Concerns

Ambiguity or opaqueness in corporate political spending has been a byproduct of the Citizens United ruling, though it was not necessarily the intention of the rule. In fact, the Supreme Court recognized in its opinion that "prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters." However, there is currently no standardized way for companies to disclose their contributions to state and local candidates, advocacy groups, or state-level political committees. As a result, shareholders often must search through numerous campaign finance reports and detailed tax documents to ascertain even limited information.

According to a recent article in the Harvard Law School Forum on Corporate Governance, "demand is growing for shareholders to be given more information about and more say over corporate political spending."[88] Further, a 2022 study by the OECD and the Principles for Responsible Investment ("PRI") found that current regulations on shareholder rights for publicly-listed companies rarely include the approval of political contributions or lobbying expenditures.[89]

Recently, the SEC has begun considering updated reporting requirements and enhancing its standards requiring publicly traded corporations to report on environmental, social, and governance ("ESG") matters, which may include guidance on corporate political spending disclosure. Currently, ESG issues are only disclosed to shareholders if they are considered material, and there is no guidance for whether political spending is considered a financially material ESG factor. However, SEC chair Gary Gensler, during his confirmation hearing in March 2021, stated that he would consider implementing a shareholder political spending disclosure rule. Additionally, in November 2021, the SEC announced that it would give less credence to corporate arguments that shareholder proposals focused on social policy issues should be excluded because they interfere with a company's "ordinary business" operations.[90]

It is worth noting that a Republican rider has existed within the U.S. federal budget legislation every year since 2015 which has prevented the SEC from considering a new rule.[91] Specifically, the rider attached to the SEC's annual funding states that**,** "none of the funds made available by this Act shall be used by the Securities and Exchange Commission to finalize, issue, or implement any rule, regulation, or order regarding the disclosure of political contributions, contributions to tax exempt organizations, or dues paid to trade associations." In March 2022, budget negotiators agreed to keep the ban in place for the current federal fiscal year, and Congress subsequently passed a $1.5 trillion spending deal which includes the aforementioned rider. As a result of the rider, "there is limited guidance as to how public companies should disclose their political contributions."[92]

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[88] Dorothy Lund, Leo Strine. "Corporate Political Spending is Bad Business: How to Minimize the Risks and Focus on What Counts." Harvard Law School Forum on Corporate Governance. January 11, 2022.

[90] Ki P. Hong, Melissa L. Miles, Karina Bakhshi-Azar. "Companies Face New Pressure From Shareholders and Regulators to Disclose Political Policies and Contributions." Skadden. January 19, 2022.
[91] Bill Flook. "Budget Deal Preserves Ban on SEC Political Spending Disclosure Rule." *Thomson Reuters*. March 10, 2022.
[92] Anna T. Pinedo, Gonzalo Go, Felix R. Zhang, Marc Leong. "Market Trends 2020/21: Disclosure on Political Contributions." Mayer Brown LLP. January 12, 2022.

Opponents to any new corporate political spending disclosure rules argue that financially material items are already required to be disclosed by companies and that Gensler should follow the definition of materiality as outlined by the 1976 Supreme Court decision in *TSC Industries, Inc. v. Northway, Inc.* While it is unclear if or when the SEC will propose such rules or what they may look like, supporters of reforming political spending disclosure suggest that they cover a company's general policy on disclosing political activity, board oversight of political spending decisions, and disclosure of the expenditures themselves, including information beyond current requirements, such as payments to trade associations and 501(c)(4) "social welfare" groups**,** and state-by-state spending.[93]

Regulatory Efforts Aimed at Enhanced Disclosure of Corporate Political Spending

U.S. Federal Regulatory Environment

Several public policy efforts have attempted to solve this problem. For example, there has been a movement toward legislation intended to strengthen corporate disclosure of political spending. The Shareholder Protection Act (H.R. 4537), which called for disclosure and shareholder authorization of political expenditures, was introduced in the House in March 2010. This act would have required a vote by the board of directors on any corporate political expenditure in excess of $50,000. The House didn't vote on the bill, but it was reintroduced as H.R. 2517 in July 2011.[94]

Further, in June 2010, the House passed H.R. 5175, the DISCLOSE Act, which aimed to increase transparency of corporate and special interest money in national political campaigns. While the act was not passed into law, in February 2012, Congressman Chris Van Hollen introduced another version of this bill, which required disclosure of the names of those making donations of $10,000 or more within 24 hours. This act would also have required increased disclosure from corporations, unions, and political organizations, such as super PACs and advocacy groups.[95] However, Senate Republicans successfully filibustered this legislation.[96]

In 2015, a coalition of over two dozen senators and 100 house members delivered a petition to then-President Obama asking for an executive order curbing the ruling of Citizens United.[97] Though Obama expressed a desire to repeal Citizens United, and although in September of that year a *Bloomberg* poll revealed 80% of Republicans and Democrats alike opposed it, ultimately no executive order was passed.[98]

In February 2017, FEC commissioner Ann Ravel resigned her position, citing the Citizens United decision and the 80% support of citizens to change campaign finance laws as major factors, and writing that the "campaign

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[93] Bill Flook. "After Years of Congressional Block, SEC Political Spending Rules Finally in Sight." *Thomson Reuters*. August 18, 2021.
[94] Lucian A. Bebchuk, Robert J. Jackson, Jr. "The Re-Introduction of the Shareholder Protection Act." Harvard Law School Forum on Corporate Governance and Financial Regulation. July 14, 2011.
[95] "Sunlight on Secret Donations." (Opinion) *New York Times*. February 12, 2012.
[96] Ezra Klein. "The DISCLOSE Act Won't Fix Campaign Finance." *Washington Post*. July 27, 2012.
[97] Sheldon Whitehouse. "Time to Crack Down on 'Dark Money.'" *CNBC*. July 6, 2015.
[98] David Cole. "*How to Reverse Citizens United*." *The Atlantic.* April 2016.

finance system should promote citizen engagement and participation" rather than "disenchantment with democracy."[99]

On August 10, 2017, Senator Bob Menendez and his cosponsors pushed to reintroduce the Shareholder Protection Act in the interests of increased corporate transparency concerning political spending, and reducing outside influence on elections. Specifically, the new legislation would: (i) mandate a shareholder vote on annual corporate political expenditure budgets, (ii) require that each specific corporate political expenditure over a certain dollar threshold be approved by the board and promptly disclosed to the shareholders and the public, (iii) require that institutional investors inform all persons in their investment funds of how they voted on corporate political expenditures, and (iv) post how much each corporation is spending on elections and which candidates or issues they support or oppose on the SEC website. Menendez also noted that the Consolidated Appropriations Act of 2017 prohibits the SEC from utilizing fiscal year 2017 funds to "finalize, issue, or implement a rule, regulation, or order regarding corporate political spending disclosures." In response, he stated that an effort is underway to remove this language from the 2018 spending act. Such amendments continue to be introduced in Congress, such as the 2017 "We the People Act," though all previous attempts have failed. Meanwhile, the Shareholder Protection Act has stagnated in Congress since its introduction in August 2017.

On February 7, 2019, the Corporate Political Disclosure Act of 2019 was introduced in the House seeking to direct the SEC to issue regulations requiring public companies to disclose political expenditures in their annual reports and on their websites. While the bill has a reasonably good chance of passing in the House, it is not expected to pass in the Senate and has since stagnated.[100]

There have been other attempts in the last few years to pass legislation reforming campaign finance, such as the For the People Act of 2021, which includes a DISCLOSE Act provision that would require super PACs and nonprofit organizations that spend money in elections to disclose the names of donors who contribute more than $10,000,[101] and the Freedom to Vote Act, which contains most of the provisions within the For the People Act of 2021.[102] Senator Menendez reintroduced the Shareholder Protection Act of 2021 following the events of the January 6, 2021 attack on the United States Capitol. However, none of these acts have gained much traction. The DISCLOSE Act failed again (it has been introduced multiple times since 2010) to advance in the Senate in September 2023, after Democrats and Republicans were deadlocked 49-49.[103] Another iteration of the bill was introduced in February 2023.

Constitutional amendments have also been proposed to overturn the Supreme Court's ruling in Citizens United. In March 2022, Congressman Adam Schiff introduced H.J.Res.80, in September 2021, several U.S. senators

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[99] Ann Ravel. "Departing the Federal Election Commission." *Medium*. February 19, 2017.
[100] Cydney Posner, Cooley LLP. "Is It Time for Corporate Political Spending Disclosure?" Harvard Law School Forum on Corporate Governance. March 17, 2019
[101] Catie Edmondson. "House Democrats Will Vote on Sweeping Anti-corruption Legislation. Here's What's in It." *New York Times*. March 7, 2019.
[102] Wendy R. Weiser, Daniel I. Weiner, Emil Mella Pablo. "Breaking Down the Freedom to Vote Act." The Brennan Center for Justice. September 23, 2021.
[103] Keith Newell. "With Deadlocked Vote on Dark Money, Disclose Act Fails to Clear Senate." OpenSecrets. September 22, 2022.

reintroduced the Democracy for All Amendment, and in April 2021, several members of Congress introduced the We the People Amendment.

U.S. State Regulatory Environment

Legislation regarding corporate political spending has also been introduced at the state level. In November 2012, voters in Montana overwhelmingly approved Initiative 166, a measure that requires the state's congressional delegation to propose an amendment to the U.S. Constitution prohibiting corporate political spending in Montana elections. From 1912 until June of that year, Montana had maintained a Corrupt Practices Act which banned corporations from making political expenditures from their general treasuries. However, the Supreme Court, in line with its Citizens United ruling, struck down this law.[104] In fact, at the time of the Citizens United ruling, 19 states had prohibited either corporate contributions or both corporate and union contributions.

After the ruling, state limitations on corporate contributions were either repealed or struck down by the courts in 14 states. As of 2023, 23 states completely prohibit corporations from contributing to political campaigns. Another five allow corporations to contribute an unlimited amount of money to state campaigns. The remaining 22 states limit the amount of money that corporations may give based on election, election cycle, or year.[105] Further, 18 impose the same restrictions on corporation contributions as they do for individual contributions, and the other four set different limits.[106]

An alternate attempt to increase disclosure requirements regarding political spending was made in August 2011 by the Committee on Disclosure of Corporate Political Spending, which submitted a petition requesting that the SEC adopt rules to require public companies to disclose the use of corporate resources for political activities to shareholders. The committee, which is composed of academics whose teaching and research focus on corporate securities law, stated in the petition that disclosure of political spending is "necessary for corporate accountability and oversight mechanisms to work." The petition drew more than 300,000 comment letters, a higher-than-average response, and prompted the SEC's corporate finance division to state in November 2012 that it was considering recommending that the SEC propose rules mandating disclosure of corporate political spending and lobbying activities.[107] The SEC is also being pressed to provide guidance or rules on political spending from other sources. In February 2012, former SEC Commissioner Luis Aguilar urged the commission to begin rulemaking on corporate political spending disclosure, stating that:

> "[w]ithholding information from shareholders is a fundamental depravation that undermines the securities regulatory framework, which requires investors receive adequate and appropriate information so that they can make informed decisions about whether to purchase, hold, or sell shares - and how to exercise their voting rights…Investors are not receiving adequate disclosure, and as the investor's advocate, the commission should act swiftly to rectify the situation by requiring transparency."[108]

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[104] "Montanans Take a Stand." (Opinion) *New York Times*. November 16, 2012.
[105] Bradley Coffey. "Twenty-Nine States Permit Corporate Campaign Finance Contributions." Multistate. April 6, 2022.
[106] **"**Campaign Contributions Overview**."** NCSL. October 4, 2019.
[107] Emily Chasan. "SEC Staff Considers Proposal on Corporate Political Donations." *The Wall Street Journal*. November 8, 2012.
[108] Emily Chasan. "SEC's Aguilar Wants New Political Donation Disclosures." *The Wall Street Journal*. February 24, 2012.

However, late in 2013, former SEC chair, Mary Jo White, made it clear the agency had no plans to address such rulemaking in 2014.[109] By the end of 2015, the SEC had received over one million comments on the proposed petition, though a major spending plan unveiled in December of that year restricted the SEC from forcing public companies to disclose political activities, thereby stopping the bill in its tracks.[110] Although the election of Joe Biden and the appointment of Gary Gensler as SEC chair could result in movement on this rule, during the four years of the Trump administration, there was no further action with regard to this issue, which was unsurprising given former- SEC chair Jay Clayton's express support for scaling back the scope and breadth of disclosure rules and compliance costs imposed on public companies.[111]

However, this approach may be a reversal from the SEC's historical role in regulating corporate political spending. Nearly four decades prior to the Citizens United ruling, the SEC investigated political contributions by U.S. corporations in the aftermath of the Watergate scandal in which it was revealed that public companies had made illegal corporate political contributions to the re-election campaign of President Nixon. Soon after, the SEC learned that hundreds of American companies had made undisclosed payments to both political parties in American elections and to foreign politicians, thus prompting the SEC to push Congress to pass the Foreign Corrupt Practices Act, which required greater corporate transparency and made bribery of foreign officials illegal.[112] Attempts at broadening the SEC's scope to include mandated disclosure of corporate political spending have so far been fruitless, however, as mentioned earlier, current SEC chair Gensler stated during his confirmation hearing in March 2021 that he would consider implementing a shareholder political spending disclosure rule.

Investors are also devising novel strategies to obtain enhanced disclosure of political spending from companies. For example, in January 2013, New York State Comptroller, Thomas DiNapoli, sued Qualcomm in an attempt to force increased disclosure of the company's political expenditures. The lawsuit raised concerns that companies were spending treasury funds against their own corporate interests and simply giving to candidates favored by senior executives.[113] On February 22, 2013, as part of an agreement to resolve the dispute, Qualcomm agreed to increase its disclosure regarding political contributions to political parties, super PACs, and other political causes.[114] Although now resolved, the lawsuit, which was filed under a provision of Delaware law that allows any shareholder to request to see certain books and records of a company, could signal increased legal risk for companies with poor disclosure or for those unresponsive to shareholder pressure regarding disclosure of political spending.

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[109] The Editorial Board. "Keeping Shareholders in the Dark." (Opinion) *New York Times*. December 3, 2013.
[110] Andrew Ackerman. "Deal Restricts SEC from Requiring Disclosure of Corporate Political Contributions." *The Wall Street Journal*. December 16, 2015.
[111] Sarah N. Lynch, John McCrank. "SEC Chairman Signals Plans to Scale Back Corporate Disclosure Rules." *Reuters*. July 12, 2017.
[112] Ciara Torres-Spelliscy. "The SEC and Dark Political Money: An Historical Argument for Requiring Disclosure." Corporate Reform Coalition. June 18, 2013.
[113] Dan Strumpf. "Qualcomm Sued Over Political-Giving Records." *The Wall Street Journal*. January 3, 2013.
[114] Dan Strumpf. "Qualcomm Settles Disclosure Suit with New York." *The Wall Street Journal*. February 22, 2013.

Private Ordering of Corporate Political Spending Disclosure

Given the widespread push to mandate more transparency in corporate political spending, it is unlikely that this issue will soon be resolved without the implementation of some sort of rule or guidance. As investors, academics, and lawmakers encourage requirements for broader transparency of political spending, there will likely be more attempts at legislative engagement on this issue. In the meantime, many investors have turned to corporate engagement and shareholder proposals to remedy some of the opacity in corporate political spending disclosure, as evidenced by a marked increase in attention and mainstream support for such proposals in recent years.

Consistent with overall trends of lower support for shareholder proposals, support for political spending proposals dropped to just 25% in 2023 (down from 32% in 2022, 41% in 2021, 36% in 2020, and 34% in 2019). Historically, on average, proposals requesting a report on a company's electioneering expenditures have fared better with shareholders than those requesting reports on lobbying. However, this trend reversed in 2022, and it remained so in 2023. Proposals requesting political contributions disclosure received only 30% support, relatively consistent with 33% in the prior year. Proposals requesting lobbying disclosure received 33% support (36% in 2021 and 35% in 2022).

Recently, investors at U.S. companies have submitted proposals requesting that the targeted companies produce reports describing if, and how, their lobbying activities (both direct and through trade associations), align with the goals of the Paris Agreement. These proposals also asked that such reports address the risks presented by any misaligned lobbying, and the companies' plans, if any, to mitigate these risks. In 2020, all three shareholder proposals on this topic received significant support. Climate lobbying resolutions at Delta Airlines, Inc. and United Airlines Holdings, Inc., for instance, received 46% and 32% support respectively, while a proposal at Chevron Corporation received majority shareholder support at 54%; a relatively uncommon occurrence for a first-time proposal. In 2021, all but one proposal were approved by shareholders, with support levels ranging from 76.4% at Norfolk Southern Corporation to 62.5% at Phillips 66. However, none of the proposals that went to a vote in 2022 received majority shareholder support.

Concerns over the alignment of companies' political and lobbying spending and their corporate values or policies have not been limited to climate change. In 2022, 13 (27%) of all political spending proposals requested that companies publish a values congruency report, up from only three proposals on the topic in 2021. In 2023, 15 proposals, representing 28% of this year's political spending proposals, requested such a values congruency report. Specifically, these proposals generally requested that companies provide a report disclosing whether incongruencies between political and electioneering expenditures and company values were identified during the preceding year, including a summary of any actions taken by the company to pause or terminate support for organizations or politicians, and the types of incongruent policy advocacy that triggered those decisions.

Investors are also seeking disclosure on public policy issues. For example, a proposal at Johnson & Johnson requested that its board commission and publish a third-party review of whether its lobbying activities (both direct and through trade associations) align with its position on Universal Health Coverage. A proposal at MasterCard Incorporated requested that any future direct or indirect donation to any one or more of the individuals who objected to the results of the 2020 presidential election be subject to the express written approval of a majority of the company's directors.

Further, investor concerns have also become more global. In 2022, shareholder proposals at McDonald's Corporation, PepsiCo, Inc., and The Coca-Cola Company requested that they annually issue a transparency report on global public policy and political influence, disclosing company expenditures and activities outside of the United States. The increased volume and specificity of these types of proposals demonstrates that investor scrutiny of corporate political spending continues to grow.

Meanwhile, support from mutual funds for political disclosure proposals has risen steadily over the past decade. In 2019, out of the 45 largest mutual funds studied by the Center for Political Accountability ("CPA"), 18 increased their support of the CPA's corporate political disclosure resolution from the previous year, while 20 decreased their support.[115] In that same year, the average amount of shareholder support for political expenditures and lobbying proposals was 34%, compared to an average of 41% in 2021, 32% in 2022, and 25% in 2023. Support for these resolutions has been equally strong among global asset managers, as a study revealed that support increased to 83.5% in 2021, compared to 75.7% in 2020.[118]

Another mechanism between shareholders and companies may be at work; companies making settlement agreements on corporate political spending disclosure has become commonplace. According to the CPA, in January 2010, 70 major companies had adopted CPA's corporate governance model for political disclosure and accountability. By 2023, that number reached 218. Originally published in 2007, the CPA-Zicklin Model Code of Conduct for Corporate Political Spending's preamble states:

> *"*The heightened risk posed by engaging in political activity makes it paramount that companies adopt a code of conduct to govern their political participation. Whether a company is directly contributing to or spending in elections or indirectly participating through payments to political or advocacy organizations, a code commits senior management and directors to responsible participation in our nation's politics. The code is a public commitment to employees, shareholders and the public to transparency and accountability. It not only mitigates risk but also demonstrates the company's understanding that its participation in politics must reflect its core values, its respect for the law and its responsibilities as a member of the body politic.*"*

In 2020, the CPA updated its code to include a principle that boards of directors must consider the broader societal and economic harm and risks posed by their company's political spending, adding that:

> *"*Directors may wish to consider where a company's interest in a healthy democracy fits with the company's purpose, values, or other commitments. They may ask how a company's actions might affect democracy, regardless of intent. They may consider what constitutes a company's obligation to support democracy overall, beyond the needs of an industry or business.**"**

As such, in light of the potential risks and in accordance with the growing investor demand for more comprehensive disclosure of political spending, many companies have begun to improve their disclosure practices. In fact, in 2023, 67.9% of companies in the S&P 500 index posted detailed political spending policies on their websites, with an additional 21.2% posting brief or vague policies. Further, in 2019, CPA reported the

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115 "Mutual Fund Support for Corporate Political Disclosure Continues Steady Rise; BlackRock, Vanguard and Fidelity Remain Outliers." Center for Political Accountability. December 17, 2019.

largest year-to-year increase in top scoring companies in terms of transparency in political contributions, up to 73 from 2018's 57. By 2022, the figure had reached 164, more than quadrupling from 35 in 2016.

As of 2023, 307 of the S&P 500 companies disclosed some or all election-related spending; meanwhile the number of companies that prohibited direct donations to state and local candidates, political parties, and committees was 155.

Despite the strides that have been made to better understand the risks associated with political spending and to improve disclosure practices, many major corporations have yet to adopt more thorough disclosure of their political donations and contributions.

As demonstrated by the 2022 addition of Russell 1000 companies to the CPA-Zicklin Index, many public companies still do not provide comprehensive disclosure of their political contributions. In 2023, 78% of Russell 1000 companies not included in the S&P 500 provided no disclosure of their contributions to state or local political candidates and parties. Levels of disclosure in other categories were also low. The amount of Russell 1000 companies that provided no disclosure for contributions to 527 groups was 88%, with 89%, 92%, 94%, and 94% not providing disclosure regarding independent expenditures, trade associations, 501(c)(4)s, and ballot measures, respectively, demonstrating only a minimal improvement since 2022.

Sustainable Political Engagement & Lobbying

In March 2021, then-acting SEC chair Allison Herren Lee stated that "political spending disclosure is inextricably linked to ESG issues" and "key to any discussion of sustainability."[116] Moreover, some proponents are now recommending that corporate political activities are embedded into corporate sustainability, and from an investor perspective, to include it within the 'G' of ESG criteria.[117] A 2022 study by the OECD and PRI recommends that company "policies should ensure that CSR/ESG teams have sufficient access to information on a company's lobbying activities and trade association membership."[118] Further, in April 2022, a memo by Kevin Brennan, co-head of the Investment Engine at Bridgewater Associates, and Paige Warren, a Harvard Senior Follow, was published describing how ESG intersects with corporate political spending. According to the memo's authors: (i) corporate political influence matters to ESG, (ii) political spending is often overlooked when it comes to ESG, and (iii) CEOs are more likely to align corporate political spending and ESG priorities when they experience pressure from key influences such as investors, board members, and executives and employees, supported by media awareness.[119] Companies face a "tug of war" on their lobbying agenda and ESG values, but executives who oversee ESG strategies state that companies must "think through how their lobbying activities address all business risk."[120]

Additionally, a 2022 paper by PRI outlines its views on the investor case for responsible corporate political engagement. According to the PRI, corporate political engagement can be responsible when the investee

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116 Anna T. Pinedo, Gonzalo Go, Felix R. Zhang, Marc Leong. "Market Trends 2020/21: Disclosure on Political Contributions." Mayer Brown LLP. January 12, 2022.
117 Alberto Alemanno. "4 Ideas on How Businesses Can Be Responsible for Political Lobbying." World Economic Forum. February 2, 2022.

120 Ellen Meyers. "Companies Face Tug-of-War on Lobbying Agenda Versus ESG Values." *Roll Call*. June 16, 2022.

company's activities: (i) adhere to existing regulations and international best practice, (ii) are conducted in line with business principles that ensure integrity and sustainability goals that have been set out in international agreements or national policy targets, (iii) preserve the long-term interests of the company, including the broad interests of diversified shareholders and those of stakeholders, (iv) inspire trust and are grounded in robust governance and transparency, and (v) lead to well-informed, inclusive and effective public policy decisions that contribute to a stable economic system, minimize firm and system-level risks and promote positive real-world sustainability outcomes.

Conclusion

Disclosure of political spending is a rapidly evolving issue that will likely continue to change significantly in the coming years. Particularly given the spending in the last several election cycles, the attention on political contributions is greater than ever before. Since the Citizens United ruling, there have been several legislative and public policy attempts aimed at expanding disclosure of corporate political contributions, which will only intensify given the ruling in *McCutcheon v. FEC*. At the same time, average support for shareholder proposals regarding this issue has steadily increased, indicating greater investor interest in ensuring that companies are appropriately mitigating risks or exploiting the benefits associated with political involvement.

In part because disclosure of political spending is limited, it is hard to ultimately know the risks that companies face due to their political activity. However, it appears that disclosure is improving. According to the 2023 CPA-Zicklin Index, which evaluates transparency and accountability practices for the entire S&P 500, among the 496 companies studied, 67.9% disclose a detailed policy governing political expenditures from corporate funds. Further, 64.3% disclosed information regarding their contributions to 527 organizations, 60.3% provided disclosure about independent expenditures to support or oppose political campaigns, and 70.8% disclosed information about contributions to state and local candidates, parties, and committees or had policies prohibiting such contributions. Additionally, 63.5% disclosed information regarding memberships in or payments to trade associations or instructed trade associations not to use company payments for election-related activity, and 48.8% disclosed information about corporate giving to 501(c)(4) “social welfare” organizations, had policies forbidding contributions to such groups, or instructed these groups not to use company contributions for election activities.

Perhaps as a way of mitigating the risks associated with political engagement, some companies have refrained entirely from engaging in the political process. The 2023 CPA-Zicklin Index points out that 387 companies said they prohibit at least one category of election-related spending. This is a stark contrast from 2010, when more than 80% of companies in the S&P 500 had not provided information on the amount of their corporate political spending.[121] Given this improvement in disclosure, companies lagging in this regard are especially obvious, particularly for investors looking to ensure that corporate funds are being utilized to serve the best long-term interests of companies and their shareholders.

Although disclosure of corporate political spending has improved overall, it remains spotty for smaller companies. As such, without some sort of broad rule or regulation, investors will likely not be afforded a clear picture of the nature of corporate political spending in the near future. Thus, it is important that investors press companies to ensure that management is vetting and engaging with the trade associations and independent organizations to which they make contributions for political purposes. As has been seen at other companies, it is possible that association with these groups can work directly against a company’s business interests or stated position on issues or that its association may expose the company to unnecessary risk.

Ultimately, however, political engagement is a business decision that must be made by each company in the context of its unique situation. Regardless of that decision, it is important that companies maintain proper

[121] Heidi Welsh, Robin Young. “How Companies Influence Elections: Political Campaign Spending Patterns and Oversight at America’s Largest Companies.” Sustainable Investments Institute, IRRC Institute. November 5, 2010.

oversight of their political activity and related spending to ensure that it is being conducted in a manner that serves the best long-term interests of the company and its shareholders. Limited disclosure of political spending makes it difficult for investors to monitor these activities, which may leave management unaccountable for its political activities. However, as incidents such as those surrounding ALEC raise the investment community's awareness, development of greater mechanisms to ensure consistent and accurate disclosure of corporate political activity may occur.

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