Campaign finance fight lands at the SEC's door

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Coming off the most expensive election in the country's history, the Securities and Exchange Commission is weighing a move to force public companies to stop hiding their political spending of shareholders' dollars.

The rule could dramatically increase the amount of information known about how some of the biggest companies and powerful political players dole out money to influence politics after the 2010 *Citizens United* ruling opened the floodgates on corporate-sponsored election ads.

Lawmakers upset with the Supreme Court decision are eager for the SEC to take on a slice of the campaign finance fight.

"In the context of *Citizens United*, at least requiring corporations that are publicly traded to have to go ahead and let their shareholders know what contributions are being made is an appropriate protection for the shareholder to have a voice in that process and generally for the public to know what companies are funding what," Sen. Robert Menendez said.

The New Jersey Democrat, who sits on the Senate Banking Committee that oversees the SEC, led a letter sent to the SEC last year signed by 14 other senators urging the commission to implement the disclosure requirements. They specifically called for more transparency on independent expenditures, electioneering communications and donations to outside groups such as super PACs.

Rep. Michael Capuano (D-Mass.) told POLITICO that a rule would empower shareholders.

"Who owns the company, is it the CEO or the shareholders? It's pretty obvious it's the shareholders," Capuano said, who favors allowing shareholders to vote on political spending. "There is a questionable business purpose to be involved in political speech."

While some companies do disclose political spending, there is no formal requirement.

It's unclear when the SEC could take up the matter, but advocates are hoping for early this year.

"We need to make it happen as soon as possible because the closer we get to the next election cycle the harder it will become to get these things in place and we want to have them in place before the 2014 midterm election," said Rep. John Sarbanes (D-Md.) said Tuesday on a call organized by supporters of the rule.

An SEC spokesman said the rule is in the "staff consideration phase."

The idea is appearing for the first time on the Office of Management and Budget's agenda of agency rulemakings, which was released Dec. 21, and it sets an April time frame for when the SEC may release a proposal.

Supporters are hailing the SEC's decision to include the idea on the OMB list, arguing the agency would not have done so if it was not serious about advancing a proposal.

"This is really a momentous moment for protecting investors," said Lisa Gilbert, director of Public Citizen's Congress Watch.

The push to require more disclosure began in August 2011 when a group headed by Harvard Law professor Lucian Bebchuk and Columbia Law School professor Robert J. Jackson, Jr. petitioned the agency to put a rule in place.

While the pressure on the SEC has been steadily building since that time, advocates have lacked an opportunity to leverage the issue onto the agency's agenda.

That may change early this year.

President Barack Obama is expected to nominate in the first few months of the year a replacement for the spot on the commission left open when former Chairman Mary Schapiro departed on Dec. 14.

The confirmation process will give congressional advocates of the rule a chance to put the issue in the spotlight and pressure the nominee to get behind increased disclosures.

"When a nomination is made, there will be a hearing and that will be an opportunity to bring that up," Menendez said.

Any action before a new commissioner is confirmed could be difficult.

Right now the commission is made up of two Democrats and two Republicans, who may need convincing.

In the past, the two Republican commissioners — Daniel Gallagher and Troy Paredes — have opposed policies they view as an attempt to address social issues through the securities agency.

For instance, in August the SEC approved a rule, on a 3-2 vote, requiring firms to disclose information about their use of so-called conflict minerals from the Democratic Republic of the Congo. The 2010 Dodd-Frank Wall Street financial reform law required the rulemaking.

Gallagher and Paredes voted against the rule questioning whether it was appropriate for the SEC to intervene in even a laudable social issue.

Gallagher has similar misgivings about getting in the middle of a campaign finance battle.

"I believe the standard for disclosure should be materiality, not the agenda of special interest groups," Gallagher said in a statement to POLITICO. "If we continue down the path away from materiality, where would it end?"

The turnover of top agency staff in the wake of Schapiro’s departure could slow a rule in the short-term as well.

Details of how exactly the SEC would write the rule are unclear.

The petition filed by the 10 law professors lays out broad strokes for why the commission has the power to enact the rule and proposes that political spending could include money that companies give to third-party groups like trade associations. They noted that the SEC's disclosure rules have evolved over time in response to changing investor interests and "external events" that render certain information important for investors.

The business lobby is preparing to beat back any move by the SEC.

The U.S. Chamber of Commerce said campaign finance issues have no place at a securities regulator and the debate should instead be left to the Federal Election Commission.

"It is obvious that the proponents of this proposal are infringing significant First Amendment interests by seeking to use the SEC rulemaking process and the legitimacy of its mission to pursue the narrow, partisan political goal of singling out for special requirements the entities that they perceive as their opponents in political and policy debates," said Chamber spokeswoman Blair Latoff.

It's not just the usual government accountability groups facing off against the Chamber in this campaign finance fight — investor advocates have entered the fray.

Since its introduction, the SEC has received support from Senate and House Democrats, state treasurers, unions, public interest groups, as well as around 321,760 form letters in favor of the rule. SEC officials have met at least four times with the proposal's supporters, including meetings with former Chairman Schapiro and Commissioner Luis Aguilar, who backs the rule.

Representatives from Common Cause, Public Citizen, PIRG, AFL-CIO and Calpers and New York City's public advocate have all meet with SEC staff.

The push for the SEC to weigh in on the matter comes as shareholders are increasingly pressing companies to reveal their political spending.

Brandon Rees, AFL-CIO Acting Director in the office of investment, said that the expensive 2012 election cycle has increased attention on companies' political spending.

"There is a focus on lobbying expenditures and lobbying activity as an important risk factor for investors," Rees said. In addition to pushing the SEC to take action, the union is also engaged in working with companies to improve voluntary disclosure.