Citizens United Turns 2—and It's Still Wrong

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In January 2010, the Supreme Court handed down the landmark decision *Citizens United v. Federal Election Commission*, which held that political spending by corporations could not be prohibited by the government, under the First Amendment. One of the court's rationales for why the public shouldn't worry about undue influence by high-spending companies was that shareholders (i.e.: the public) could always pressure companies to spend the money in their interest. As it turns out, that's not always the case.

Last September, I argued on this site that corporations should be required to disclose their political activities and spending. The problem, I wrote, was that if corporations' political spending were left up to individuals, like executives or directors, those individuals could advance their personal interests by directing money to their preferred political organizations. As I wrote:

> Corporate executives often own a lot of stock, so they have an incentive to support politicians who will be friendly to their companies. But they are also rich people, so they have an incentive to support politicians who will reduce taxes on the rich (and especially taxes on gains from stock)--even though lower taxes mean less money for the infrastructure spending that many businesses want and even the Chamber of Commerce wants.

Since then, Harvard law professor John Coates has put some effort into figuring out just what corporations are doing with their political spending, and how it affects their shareholders. The short answer, revealed in his new working paper, is that political activities are bad for shareholders.

First, Coates acknowledges that there are highly regulated industries, such as banking and telecommunications, where government policy is so important that all companies invest heavily in political activities, and the level of political activity doesn't seem to affect shareholder value. In other words, lobbying is just a cost of doing business.

More generally, however, higher levels of political activity turn out to be correlated with lower company value. Coates analyzed companies in the S&P 500 over several years, comparing their lobbying expenditures and the contributions of their corporate PACs (political action committees) with their value as measured by Tobin's Q (the ratio of a company's market value to the "book," or accounting value of its assets). He found that companies that engage in lobbying and campaign contributions tend to be less valuable than those that avoid political activity (pp. 21-22 and Table 5).

Why should this be the case? After all, the conventional wisdom is that companies are profit-maximizing machines that would only invest in politics if it were likely to make them more profitable. It's hard in a regression to isolate causation, but it seems likely that corporate political activity, like expensive toilets and shower curtains, is a form of executive consumption that comes at the expense of shareholders.

For one thing, higher levels of political activity are correlated with weak shareholder governance (pp. 20-21 and Tables 3-4), use of corporate jets by CEOs (p. 18), and CEOs who go on to have political careers (pp. 19-20 and Table 2). That means CEOs are more likely to spend money on politics if they don't worry about their shareholders, they consume other perks like corporate jets, and they have political ambitions. All of these factors should lead you to believe that corporate political activity is something that CEOs do for their own interests rather than for shareholders' interests.

The glorification of the corporation over the past thirty years has been predicated in large part on the myth that corporations are solely dedicated to maximizing shareholder value. But corporations only maximize shareholder value if shareholders have a way to keep executives and employees in line and prevent them from simply lining their own pockets. Decades of research have shown numerous failings in the standard corporate governance model: boards that are stuffed with cronies of the CEO, directors who have no ability to evaluate what their companies are actually doing, massive golden parachutes that insulate CEOs against failure, and so on. Poor oversight of political activity may be another to add to the list.

There is much work still to be done on corporate political activity and its implications for shareholders. But the early evidence is that we cannot simply assume, as the Supreme Court did in Citizens United, that shareholder pressure will magically ensure that a company's political spending is always in its best interests. In this context, the need for improved disclosure is even more urgent.

Update: This post initially stated that Saturday marked the third anniversary of *Citizens United*.