Fulfilling the Promise of 'Citizens United'

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The Supreme Court's January 2010 *Citizens United* decision to permit corporations to spend unlimited sums to influence federal elections was premised on a pair of yet-unfulfilled promises: Corporations would disclose their expenditures, and shareholders would be able to police such spending. The best chance to fulfill those promises may now rest with the Securities and Exchange Commission. The SEC could require disclosure of political spending by public companies and facilitate action by shareholders to sign off on such spending.

Contrary to the consensus view, however, SEC action may prove to be a favor to the owners of the affected corporations. Despite reflexive opposition to the disclosure of political spending from many self-appointed business advocates, research we are publishing Wednesday suggests that disclosure of political activity might benefit corporate valuations and, at the least, mandatory disclosure would pose no threat of a detrimental effect.

For decades, conservatives opposed regulation of campaign spending in favor of unlimited spending with full disclosure. Post columnist George F. Will once proposed boiling down campaign regulation to "seven words: no cash, full disclosure, no foreign money." In *Citizens United v. Federal Election Commission*, Justice Anthony M. Kennedy embraced this vision, writing for the majority: "With the advent of the Internet, prompt disclosure of expenditures can provide shareholders and citizens with the information needed to hold corporations and elected officials accountable for their positions and supporters."

But when *Citizens United* was decided, FEC rules did not require disclosure of corporate political spending. Of $266 million spent by outside groups in 2010, nearly half was spent by groups that revealed nothing about their funders. The undisclosed portion amounted to double the total spending by outside groups in 2006, the previous midterm election.

So far, efforts to close the disclosure gap have failed. Comprehensive disclosure reform should come from Congress, but congressional action may be hard to achieve. Last year, a bill requiring the reporting of any donor giving $1,000 or more for a campaign ad passed the House, but the legislation fell one vote short of overcoming a filibuster in the Senate. The FEC is deadlocked. A draft executive order aimed at government contractors was leaked but not issued. The SEC, then, looks to be the best bet for fulfilling Justice Kennedy's promise that corporate political activity would be disclosed.

Amid these developments, a common assumption has been that, whether corporate political activity is good for the country, it is good for corporate shareholders. Why else would corporations want to get involved in politics?

Counter to those perceptions, however, several studies suggest that companies seeking political advantage may not be doing their shareholders any favors. Rather, such activity may reflect the interests of corporate managers and benefit shareholders less than other possible uses of their money. Politically active public companies are less valued by the market, and companies with

better corporate governance — including the presence of large, active shareholders — are less politically active.

What about disclosure? We analyzed market valuations of 80 companies in the Standard & Poor's 500 that have policies calling for disclosure of electioneering activities. In particular, we compared the price-to-book ratios of those companies with other S&P 500 companies in the same industries. After controlling for size, leverage, research and development, growth and political activity, we found that companies with disclosure policies had a 7.5 percent higher industry-adjusted price-to-book ratio than other firms.

Given data limitations, we cannot claim disclosure policies cause higher price-to-book ratios, only that companies with pro-disclosure policies are generally more valuable. But our data, which are from 2010, are inconsistent with claims that disclosure will harm corporations, and they are consistent with the idea that well-managed companies responsive to shareholder concerns tend to be valued more highly than other companies.

The voluntary disclosure policies that provided the basis for our analysis are encouraging. But such policies are inconsistent, sometimes incomplete and lack enforcement mechanisms. For a typical investor, the question is whether corporate political activity overall is valuable. Voluntary disclosures by a small fraction of public companies cannot answer that question.

Citizens United opened up a brave new world in which corporations could spend unlimited sums to influence federal elections in exchange for having their expenditures monitored by their shareholders and the public at large. Only half of this promise has been fulfilled. It's up to the SEC to make good on the other half.

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